

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE:  
NATIONAL PRESCRIPTION  
OPIATE LITIGATION  
  
CASE TRACK THREE

Case No. 1:17-md-2804  
Cleveland, Ohio  
  
November 8, 2021  
9:00 A.M.

- - - - -

**VOLUME 25**

- - - - -

TRANSCRIPT OF JURY TRIAL PROCEEDINGS,  
BEFORE THE HONORABLE DAN A. POLSTER,  
UNITED STATES DISTRICT JUDGE,  
AND A JURY.

- - - - -

Official Court Reporter: Heather K. Newman, RMR, CRR  
7-189 U.S. Court House  
801 West Superior Avenue  
Cleveland, Ohio 44113  
216-357-7035

Proceedings recorded by mechanical stenography; transcript  
produced by computer-aided transcription.

## 1 APPEARANCES:

2 For the Plaintiffs:

Peter H. Weinberger, Esq.  
Spangenberg, Shibley & Liber  
1001 Lakeside Avenue, Ste. 1700  
1900 East Ninth Street  
Cleveland, Ohio 44114  
216-696-3232

W. Mark Lanier, Esq.  
Rachel Lanier, Esq.  
M. Michelle Carreras, Esq.  
The Lanier Law Firm  
6810 FM 1960 West  
Houston, Texas 77069  
813-659-5200

Frank L. Gallucci, III, Esq.  
Plevin & Gallucci Company, LPA  
The Illuminating Building  
Suite 2222  
55 Public Square  
Cleveland, Ohio 44113  
216-861-0804

Salvatore C. Badala, Esq.  
Maria Fleming, Esq.  
Napoli Shkolnik  
360 Lexington Ave., 11th Floor  
New York, New York 10017  
212-397-1000

16 For Walgreen Defendants:

Kaspar J. Stoffelmayr, Esq.  
Brian C. Swanson, Esq.  
Katherine M. Swift, Esq.  
Alex Harris, Esq.  
Sharon Desh, Esq.  
Bartlit Beck LLP  
54 West Hubbard Street, Ste.300  
Chicago, Illinois 60654  
312-494-4400

21 For CVS Defendants:

Graeme W. Bush, Esq.  
Eric R. Delinsky, Esq.  
Alexandra W. Miller, Esq.  
Paul B. Hynes, Jr., Esq.  
Zuckerman Spaeder - Washington  
Suite 1000  
1800 M Street, NW  
Washington, DC 20036  
202-778-1831

1 For Walmart Defendants: John M. Majoras, Esq.  
2 Jones Day - Columbus  
3 Suite 600  
4 325 John H. McConnell Blvd.  
5 Columbus, Ohio 43215  
6 614-281-3835

7 Tara A. Fumerton, Esq.  
8 Tina M. Tabacchi, Esq.  
9 Jones Day - Chicago  
10 Suite 3500  
11 77 West Wacker  
12 Chicago, Illinois 60601  
13 312-782-3939

14 ALSO PRESENT: Special Master David Cohen

15

16

- - - - -

17

18

19

20

21

22

23

24

25

26

27

28

29

30

08:35:12 1 Monday Session, November 8, 2021, at 9:00 A.M.

08:42:01 2 COURTROOM DEPUTY: All rise.

08:42:02 3 THE COURT: Okay. Everyone can be seated,  
08:42:04 4 please.

08:42:17 5 MR. DELINSKY: Your Honor, could I take one  
08:42:18 6 thing off your plate real quick?

08:42:20 7 THE COURT: Okay. Sure.

08:42:21 8 MR. DELINSKY: CVS filed a Motion to Strike  
08:42:25 9 last night. Plaintiffs filed an opposition. I think  
08:42:27 10 there's a likelihood that we can reach a compromise on that,  
08:42:30 11 and we want to return to it at lunch or maybe after court  
08:42:33 12 today as we all think about it.

08:42:35 13 THE COURT: All right.

08:42:35 14 I hope -- that's fine. I'll -- obviously one of the  
08:42:39 15 things I was going to take up but we'll defer that. I think  
08:42:43 16 the plaintiffs have made clear they're not offering it into  
08:42:47 17 evidence, so hopefully you can work that out.

08:42:51 18 MR. DELINSKY: I think we're going to be able  
08:42:52 19 to, Your Honor.

08:42:53 20 THE COURT: All right. All right.

08:43:03 21 Well, someone handed up two exhibits the plaintiffs  
08:43:09 22 plan -- want to offer with Mr. Hill.

08:43:15 23 Are the defendants offering anything?

08:43:17 24 MR. DELINSKY: No exhibits through Mr. Hill,  
08:43:20 25 Your Honor.

08:43:21 1 THE COURT: All right.

08:43:21 2 The plaintiffs are offering 23011 and 01253. Any  
08:43:35 3 objection to those?

08:43:37 4 MR. DELINSKY: We do -- we do have objections  
08:43:39 5 to both, Your Honor. The two exhibits -- I think I'll take  
08:43:44 6 them in reverse order. The first is the -- the ALJ opinion  
08:43:49 7 and approved by the DEA administrator. I think -- it's the  
08:43:53 8 East Main key speaker. Yeah. So it's just a case, doesn't  
08:43:57 9 involve CVS. It's just a DEA case. And I think this is the  
08:44:04 10 first time we've had this issue come up.

08:44:06 11 We obviously are still working through two other  
08:44:09 12 opinions that pertain to CVS in particular, but this is just  
08:44:12 13 a case. It's just a case particular --

08:44:15 14 THE COURT: Well, it involves East Main Street  
08:44:18 15 Pharmacy. I mean, what -- it was used in his examination.

08:44:25 16 What's the objection?

08:44:27 17 MR. DELINSKY: The objection, Your Honor, is  
08:44:29 18 that the law should come from Your Honor as opposed to from  
08:44:32 19 the jurors reading cases.

08:44:34 20 THE COURT: Well. . . it's not coming in for  
08:44:39 21 that purpose. It came in -- he was a DEA expert and I think  
08:44:46 22 he was talking about what -- DEA's positions.

08:44:51 23 Let me see the document, please. What are the  
08:44:53 24 plaintiffs offering it for?

08:44:55 25 MR. WEINBERGER: So, in -- the issue was how

08:44:58 1 far back did red flags exist as far as the DEA was concerned  
08:45:05 2 or DEA notice, and you'll recall he said that the first time  
08:45:09 3 that red flags was used was in a PDAC in 2011. And so he  
08:45:15 4 was crossed on this document to demonstrate that there was a  
08:45:20 5 decision that -- on a case that the DEA brought long before  
08:45:24 6 I think 2010 or -- started in 2010.

08:45:27 7 THE COURT: All right.

08:45:28 8 Well, I'm going to admit it over objection. It's  
08:45:32 9 relevant to DEA's enforcement.

08:45:36 10 MR. DELINSKY: Your Honor, the next document  
08:45:40 11 was the *Touhy* letter. I understood that plaintiffs  
08:45:46 12 introduced that for impeachment, for impeachment.

08:45:47 13 THE COURT: No, it says 23011, Robert Hill  
08:45:50 14 Track 3 Expert Report Response.

08:45:53 15 MR. WEINBERGER: It's kind of mislabeled on  
08:45:55 16 that. This is the *Touhy* letter from August 11th, '20 --  
08:46:01 17 August 12th, 2021.

08:46:03 18 THE COURT: Well, I don't think this -- I  
08:46:05 19 allowed you to cross-examine him with it, but I'm concerned  
08:46:09 20 about admitting the document itself. It's -- the document's  
08:46:15 21 hearsay.

08:46:16 22 It's -- so why -- exactly what -- what's the purpose  
08:46:26 23 of offering it as an exhibit?

08:46:27 24 MR. WEINBERGER: To buttress the testimony and  
08:46:33 25 the evidence that his opinions were not endorsed or embraced

08:46:40 1 by the DEA and they were his opinions only.

08:46:42 2 THE COURT: Well, the letter is hearsay. I  
08:46:46 3 allowed it in to impeach him but I'm not going to admit the  
08:46:51 4 letter.

08:46:52 5 MR. WEINBERGER: Okay.

08:46:53 6 MR. DELINSKY: And, Your Honor, I, of course,  
08:46:55 7 for about the 17th time in this trial, Your Honor, I erred.  
08:47:00 8 There is one Hill exhibit.

08:47:01 9 THE COURT: Okay.

08:47:02 10 MR. DELINSKY: It is the testimony to Congress  
08:47:09 11 of Robert Patterson, who at the time was the acting  
08:47:12 12 administrator of the DEA.

08:47:14 13 We used one page of that. We wouldn't seek to admit  
08:47:18 14 the entire testimony. It was a page that talked -- where he  
08:47:21 15 says 99.99 percent of doctors are all trying to do right by  
08:47:25 16 their patients.

08:47:26 17 We would propose to work with the plaintiffs to --  
08:47:31 18 whether it's that page or the page before to capture the  
08:47:34 19 question.

08:47:34 20 THE COURT: All right. Any objection to that?

08:47:36 21 MR. WEINBERGER: Yes. We object to that.  
08:47:38 22 This document actually. If memory serves me correctly,  
08:47:42 23 there was an attempt to introduce this document previously  
08:47:44 24 through another witness.

08:47:45 25 This is the testimony of Mr. Patterson who was head of

08:47:50 1 the DEA before Congress. It's -- this isn't Hill's  
08:47:59 2 testimony. This has nothing to do with Hill or in terms  
08:48:04 3 of --

08:48:04 4 THE COURT: Well, it -- if he authenticated as  
08:48:09 5 DEA, let me see it. When was this testimony given?

08:48:12 6 MR. WEINBERGER: May 8th, 2018. I mean, he's  
08:48:16 7 gone from the DEA at that point.

08:48:23 8 MR. DELINSKY: That is true, Your Honor.

08:48:24 9 THE COURT: All right. I agree.

08:48:26 10 I'm not going to let -- there's been testimony about  
08:48:28 11 it but I'm not going to let it in through him. He's --

08:48:31 12 MR. DELINSKY: Understood, Your Honor.

08:48:32 13 THE COURT: He can't -- he can't testify to  
08:48:35 14 what DEA's position was three or four years after he left.  
08:48:47 15 So that takes care of Hill.

08:48:49 16 The plaintiffs have offered two with Dr. Murphy. The  
08:48:55 17 Case and Deaton article, 01666. Any objection to that?

08:49:02 18 MS. FUMERTON: Yes, Your Honor. We object to  
08:49:03 19 it as hearsay.

08:49:04 20 MR. WEINBERGER: Your Honor, this was an  
08:49:05 21 article that he cited and relied upon and he was  
08:49:09 22 cross-examined on it.

08:49:10 23 THE COURT: Yeah. All right.

08:49:11 24 That comes in over objection because he cited and  
08:49:18 25 relied on it. All right.



08:49:19 1 The next one is 17422.

08:49:23 2 MS. FUMERTON: And, Your Honor, we object to  
08:49:24 3 this one as well. Plaintiffs did not establish any  
08:49:27 4 relevancy or foundation, and Dr. Murphy repeatedly denied  
08:49:30 5 knowing anything about the document and refused to agree  
08:49:32 6 with plaintiffs' framing of it. It's also hearsay.

08:49:35 7 MR. WEINBERGER: So, to refresh your memory,  
08:49:37 8 Your Honor --

08:49:37 9 THE COURT: Let me see the document. I don't  
08:49:39 10 --

08:49:39 11 MR. WEINBERGER: This was a PowerPoint that we  
08:49:42 12 obtained in discovery, the 30(b)(6) deposition of the Ohio  
08:49:45 13 State Medical Board.

08:49:47 14 It was -- the page that he was shown is the Ohio State  
08:49:53 15 Medical Board's analysis of OARRS and people that ultimately  
08:50:03 16 died from heroin or fentanyl, and the -- I could show you  
08:50:09 17 the page, Your Honor.

08:50:13 18 THE COURT: No. I don't see how this comes in  
08:50:14 19 through him, so I'm not going to allow that.

08:50:17 20 Are the defendants offering anything through Dr.  
08:50:22 21 Murphy?

08:50:22 22 MS. FUMERTON: No, Your Honor.

08:50:40 23 THE COURT: So it looks like the only  
08:50:41 24 remaining witness is Glickman. Anyone offering anything  
08:50:44 25 through --

08:50:45 1 MS. FUMERTON: Yes, Your Honor. May I  
08:50:47 2 approach?

08:50:48 3 THE COURT: Okay. Have the plaintiffs looked  
08:50:58 4 at these?

08:51:00 5 MR. WEINBERGER: Yes, Your Honor, and we  
08:51:01 6 notified defense counsel last night, I think it was, that we  
08:51:05 7 were objecting to all of those -- all of these, and let me  
08:51:08 8 tell you why.

08:51:08 9 These are -- these are his charts that were used  
08:51:13 10 during the course of his direct examination. They are not  
08:51:19 11 1006 charts, in our view. They are simply charts that  
08:51:24 12 either -- that were derived directly from his report or that  
08:51:28 13 he created from his report. These are opinion charts.

08:51:32 14 These are -- this would be tantamount to admitting  
08:51:36 15 portions of his expert report. He certainly was entitled to  
08:51:45 16 testify and use them and the defense counsel was entitled to  
08:51:48 17 use them as demonstratives, but I don't believe the -- any  
08:51:52 18 of these appropriately go to the jury.

08:51:54 19 MS. FUMERTON: And, Your Honor, we obviously  
08:51:56 20 disagree with that. We think these fall squarely within  
08:51:59 21 Rule 1006 and Your Honor's prior rulings on this. You have  
08:52:02 22 admitted into evidence similar charts that were created by  
08:52:05 23 Dr. McCann. You know, he -- there's no question that he  
08:52:09 24 testified about them. There's no question that he laid the  
08:52:12 25 foundation for them, and all they are are straightforward

08:52:14 1 summaries of voluminous data. And so in our view, they fall  
08:52:18 2 squarely within Rule 1006.

08:52:20 3 I will also note that we have been providing these for  
08:52:22 4 months, frankly, with plaintiffs to let them know that we  
08:52:25 5 were going to use them as Rule 1006 summaries and they never  
08:52:28 6 asserted specific objections until now.

08:52:33 7 MR. WEINBERGER: Well --

08:52:33 8 THE COURT: I allowed -- I put in some summary  
08:52:36 9 charts, plaintiffs put in some summary charts through  
08:52:39 10 Dr. McCann and other witnesses.

08:52:40 11 MR. WEINBERGER: Well, to be clear, the charts  
08:52:41 12 with respect to Dr. McCann are simply a compilation of the  
08:52:50 13 dosage units per year, per defendant, per store. That's it.  
08:52:55 14 They're not -- they are not opinions of his.

08:53:01 15 These are -- these were -- these are simply purely  
08:53:04 16 1006s. Every one of these charts --

08:53:07 17 THE COURT: These charts aren't opinions,  
08:53:09 18 Mr. Weinberger.

08:53:10 19 MR. WEINBERGER: Well, sure they are.  
08:53:12 20 Every -- every one of them.

08:53:16 21 THE COURT: If they were opinions, I wouldn't  
08:53:18 22 let them in. They're -- they're summaries of data, and the  
08:53:25 23 data is authentic. A lot of is McCann's data. Not an  
08:53:30 24 opinion, like here's the --

08:53:32 25 MR. WEINBERGER: But many of them are limited

08:53:34 1 to -- are -- is data that he created limited information on,  
08:53:42 2 including pie charts, to --

08:53:45 3 THE COURT: All right. I'm allowing them all  
08:53:48 4 in over objection.

08:53:49 5 MR. WEINBERGER: All right.

08:53:50 6 THE COURT: They're not opinions. I mean,  
08:53:54 7 here's the first one. This isn't an opinion. Annual  
08:53:57 8 prescriptions dispensed by Walmart per capita for oxycodone  
08:54:01 9 and hydrocodone, January '06 to March '18. That's not an  
08:54:05 10 opinion; that's a summary of -- summary or compilation of  
08:54:09 11 data that everyone agrees is authentic. It's not an  
08:54:14 12 opinion.

08:54:19 13 So I'll admit all these over objection: 01536, 01539,  
08:54:25 14 01540A, 01541A, 01549, 01550, 01553, 01555, 01577, 01581,  
08:54:45 15 01582, 01583, 01584, and 01585.

08:54:58 16 Are the plaintiffs offering anything with Dr.  
08:55:00 17 Glickman?

08:55:02 18 MR. WEINBERGER: No, Your Honor.

08:55:04 19 THE COURT: Okay.

08:55:08 20 MR. HYNES: Your Honor, Paul Hynes for CVS.

08:55:10 21 Can we raise, with your indulgence, one issue related  
08:55:13 22 to an exhibit that was introduced through Nicci Harrington,  
08:55:16 23 the CVS witness who testified on Wednesday?

08:55:20 24 The exhibit is P-00 --

08:55:23 25 THE COURT: If someone wants to give it to me.

08:55:25 1 I assume I admitted it already.

08:55:29 2 UNIDENTIFIED SPEAKER: Here you go. May I  
08:55:30 3 approach?

08:55:30 4 THE COURT: Yeah.

08:55:32 5 MR. WEINBERGER: Which one are we. . .

08:55:47 6 MR. HYNES: Your Honor, this is a document  
08:55:49 7 that plaintiffs asked Ms. Harrington about during her  
08:55:52 8 cross-examination. It's a 45-page document. She was asked  
08:55:56 9 about two pages in the document.

08:56:00 10 There has been a practice throughout this trial when a  
08:56:02 11 witness is asked about a voluminous document of admitting  
08:56:06 12 only the pages that he or she was asked about. And we would  
08:56:10 13 just ask that the same practice be followed with respect to  
08:56:12 14 this document.

08:56:13 15 THE COURT: Well, I don't know. What did we  
08:56:14 16 discuss when this was --

08:56:15 17 MR. HYNES: I put two pink tabs on the pages.

08:56:18 18 THE COURT: I know, but we went through this  
08:56:20 19 already with Harrington. We took care of her. SO what did  
08:56:22 20 I rule on this document?

08:56:24 21 MR. HYNES: Your Honor, you admitted the whole  
08:56:26 22 document and we just neglected to bring this issue to your  
08:56:29 23 attention, and we apologize for that oversight.

08:56:31 24 MR. WEINBERGER: This wasn't the one that we  
08:56:33 25 previously discussed, and we agreed just to the pages that

08:56:35 1 had her name on it. I thought we --

08:56:39 2 MR. HYNES: Maybe we had. There were a couple  
08:56:41 3 documents.

08:56:42 4 MR. WEINBERGER: I thought this is the one we  
08:56:44 5 agreed we were going to do the front page, which was the  
08:56:46 6 e-mail --

08:56:47 7 MR. HYNES: No, that's different one.

08:56:49 8 MR. DELINSKY: But it was the same rule.

08:56:53 9 MR. WEINBERGER: Okay. Laura's going to look  
08:56:55 10 at it and then we'll --

08:56:57 11 MR. DELINSKY: We'll circle back on it?

08:56:59 12 MR. WEINBERGER: Yeah.

08:57:00 13 MR. HYNES: Your Honor, is that okay?

08:57:01 14 THE COURT: Yeah, I guess so. So if you work  
08:57:02 15 it out.

08:57:03 16 I've already admitted the document. If you can agree  
08:57:05 17 on -- I agree if this is a 40-page document and there was  
08:57:08 18 only testimony about two pages --

08:57:11 19 MR. HYNES: Right.

08:57:12 20 THE COURT: That has been following my general  
08:57:15 21 practice, it will be confusing for the jury to have a whole  
08:57:19 22 lot of pages with -- not tied to anything.

08:57:21 23 MR. HYNES: And just so it's clear, we're not  
08:57:23 24 trying to -- we're fine with the document coming in. We're  
08:57:26 25 just trying to keep it to those pages. We're not trying to

08:57:28 1 change that.

08:57:29 2 THE COURT: All right.

08:57:31 3 UNIDENTIFIED SPEAKER: Your Honor, I feel  
08:57:34 4 confident Mr. Hynes and I will be able to work that out.

08:57:37 5 THE COURT: All right. Work it out. All:  
08:57:47 6 Right.

08:57:47 7 Last -- I spent a lot of time over the weekend coming  
08:57:50 8 up with what I think is an accurate limiting instruction for  
08:57:56 9 the testimony from several witnesses about conversations  
08:57:59 10 they said they had with representatives of State Boards of  
08:58:07 11 Pharmacy.

08:58:07 12 Unless someone convinces me it's wrong, I'm going to  
08:58:14 13 go with that. And I mean if someone thinks it's absolutely  
08:58:16 14 wrong or that it's confusing and you've got some better  
08:58:20 15 suggestion, I'd ask the parties to come up with something.  
08:58:23 16 But since nothing was submitted, I did it myself with my  
08:58:27 17 team's help.

08:58:30 18 MR. MAJORAS: Your Honor, we're still --

08:58:32 19 THE COURT: The plan is to add that to, I  
08:58:34 20 think it's Page 22, right after the paragraph on settlement  
08:58:37 21 agreements.

08:58:38 22 MR. MAJORAS: Your Honor, John Majoras.

08:58:40 23 We do object to the language. I frankly am still  
08:58:43 24 looking at it from this morning. We will have something  
08:58:46 25 back to the Court either a counterproposal or otherwise.

08:58:49 1 THE COURT: You object to it? What's --

08:58:51 2 MR. MAJORAS: Well, the primary one is the one  
08:58:52 3 I mentioned the other day which is that I think it unfairly  
08:58:55 4 points to specific witnesses and undermines their testimony  
08:59:01 5 away from other rulings.

08:59:03 6 We've had hearsay rulings throughout the case that are  
08:59:05 7 going to apply broadly, and we have not had the need for  
08:59:09 8 this limiting instruction. Doing it in a way that points to  
08:59:11 9 specific witnesses unfairly undermines their testimony. I  
08:59:15 10 think there can be an instruction that is broad enough that  
08:59:19 11 does not address specific testimony.

08:59:22 12 THE COURT: Well, I hear what you're saying  
08:59:23 13 but I -- it might actually heighten the importance of it,  
08:59:30 14 Mr. Majoras.

08:59:30 15 The jury might have completely forgotten about it and  
08:59:32 16 now they're being pointed to it and now they'll all remember  
08:59:36 17 it.

08:59:36 18 All it's saying is they can't take it as evidence of  
08:59:39 19 what the official policy of the Board of Pharmacy was, and  
08:59:42 20 that isn't what you offered it for. You offered it for the  
08:59:44 21 fact -- the fact that your employees had the conversations  
08:59:49 22 and they acted in reliance on it.

08:59:54 23 So -- all right. But I'll -- I don't know. If you  
08:59:57 24 object, fine.

08:59:57 25 MR. WEINBERGER: For the record, the



08:59:58 1 plaintiffs are comfortable with it and in terms of content  
09:00:02 2 as well as instructing the jury after -- in the portion of  
09:00:08 3 the jury instructions that you've suggested.

09:00:09 4 THE COURT: All right. Well --

09:00:11 5 MR. MAJORAS: I'll get back to you shortly,  
09:00:13 6 Your Honor, with either specific language or -- I take your  
09:00:15 7 point. I do recognize that issue. And we're -- that's part  
09:00:17 8 of the reason I'm wrestling with it.

09:00:19 9 THE COURT: This was different than some of  
09:00:21 10 the other rulings I made. And I don't think, Mr. Majoras,  
09:00:26 11 I -- you know, nothing quite like this that I -- that  
09:00:31 12 there's clearly a permissible purpose and clearly and  
09:00:35 13 impermissible purpose, and the jury wouldn't necessarily  
09:00:38 14 know that. It wouldn't be apparent.

09:00:43 15 Quite frankly, it took me a while to figure out  
09:00:46 16 exactly how to say it. So, all right.

09:00:58 17 I guess the plaintiffs are going to file something by  
09:01:02 18 middle of the day responding to the defendants' suggestions  
09:01:04 19 for changes to the jury instructions.

09:01:07 20 MR. WEINBERGER: Yes, Your Honor.

09:01:09 21 THE COURT: I started looking at them, so I'll  
09:01:11 22 look at what the plaintiffs say, and we'll get on that.

09:01:16 23 I don't know if you've given any more thought to the  
09:01:20 24 time limits for closing arguments. Again, I want to fit  
09:01:25 25 this into a day. I don't want to keep the jury real late.

09:01:28 1 It's also not fair to the person who's speaking last if it's  
09:01:32 2 at 7 o'clock at night. So I think you all can sort of  
09:01:36 3 figure it out, but I'll -- I have some thoughts, but I'll  
09:01:41 4 hear what you have to say.

09:01:43 5 I had one other thought, too. Something's occurred  
09:01:49 6 which I never would have predicted. We've gone like  
09:01:53 7 six weeks. We've got one more week to go. We have not lost  
09:01:56 8 a single juror for illness, COVID, family issues, whatever.  
09:02:01 9 I never would have predicted this. I don't think anyone  
09:02:03 10 would have. We lost one juror but it was for that other  
09:02:08 11 issue.

09:02:10 12 MR. LANIER: Oh, yeah.

09:02:10 13 THE COURT: Yeah. So I'm slated to excuse  
09:02:18 14 Juror No. 13. I looked at the Rules. The Rules say you  
09:02:22 15 cannot have a jury of more than 12, and you can't have a  
09:02:26 16 jury of less than six, but there's case law that, with the  
09:02:30 17 parties' consent, you can take a verdict from less than six.

09:02:37 18 This is a pretty cohesive group, and I don't want to  
09:02:41 19 do anything that fractures that cohesion. And I would only  
09:02:47 20 keep Juror No. 13 if everyone agrees because I had said  
09:02:52 21 we're going to have 12 and, you know -- at least 12 and  
09:02:58 22 whoever is left, 12 and under, would deliberate. If there  
09:03:01 23 were more than 12, those persons would be excused.

09:03:04 24 So I will stay with that, but if everyone -- everyone  
09:03:10 25 is agreeable and will put it on the record to keep Number

09:03:15 1 13, then we, in my view, the parties' consent, we can do it.

09:03:18 2 So I want you to think about it and I never  
09:03:26 3 expected -- and look, something could still happen in the  
09:03:29 4 next week, but I never would have predicted that everyone  
09:03:32 5 would stay healthy. I'm glad that occurred. So you can  
09:03:36 6 think about that.

09:03:43 7 I guess the last thing is someone suggested that at  
09:03:49 8 closing argument, we do something to recognize two fine  
09:03:54 9 people who we had at the beginning of this MDL and we no  
09:03:58 10 longer have, Paul Hanley and Francis McGovern, and sort of  
09:04:03 11 recognize them by having empty chairs somewhere. And I  
09:04:05 12 thought that was a real nice idea.

09:04:08 13 I mean, I guess Mr. Hanley would have sat somewhere on  
09:04:13 14 the plaintiffs' -- plaintiffs' group and Francis would have  
09:04:15 15 been over there with my team. So I think we'll do that.

09:04:19 16 I think it's a nice -- very good gesture and  
09:04:24 17 appropriate. This MDL has been going almost exactly  
09:04:27 18 four years, long time, and we've lost two -- at least two  
09:04:34 19 very fine people along the way.

09:04:37 20 Okay. Anything else anyone wants?

09:04:41 21 MR. DELINSKY: Your Honor, two quick things.

09:04:45 22 Where you just ended, let me state the uncomfortable  
09:04:48 23 thing because I agree it's a wonderful gesture.

09:04:51 24 THE COURT: I wouldn't say anything to the  
09:04:52 25 jury.

09:04:53 1 MR. DELINSKY: Yeah. That's it, Your Honor.

09:04:54 2 THE COURT: I wasn't going to say anything to  
09:04:56 3 the jury.

09:04:56 4 MR. DELINSKY: That was my only issue,  
09:04:57 5 Your Honor.

09:04:57 6 THE COURT: No, Mr. Delinsky, I wasn't going  
09:04:59 7 to say anything to the jury. The jury, quite frankly,  
09:05:02 8 wouldn't even know -- you know, there's no one in a chair.

09:05:04 9 MR. DELINSKY: Okay.

09:05:05 10 THE COURT: There have been empty chairs. I  
09:05:06 11 mean, they don't count the chairs. No, I wouldn't -- you  
09:05:11 12 know, I might mention it before the jury comes out.

09:05:13 13 MR. DELINSKY: Yeah, okay.

09:05:14 14 THE COURT: But I'm not going to say anything.

09:05:16 15 MR. DELINSKY: All right. Thank you, Your  
09:05:16 16 Honor.

09:05:16 17 The one other issue is in all the back and forth on  
09:05:20 18 the limiting instructions, there hasn't been a reading yet  
09:05:22 19 of the limiting instruction on the settlements. That did  
09:05:26 20 come in briefly on Friday and extensively -- not extensively  
09:05:31 21 but with Ms. Harrington on Wednesday.

09:05:33 22 I would request this morning that the settlement  
09:05:36 23 instruction be read. I know it will be read on Monday, one  
09:05:38 24 week from today as well, but I would make that request,  
09:05:41 25 Your Honor.

09:05:44 1 MR. WEINBERGER: We would object to that. We  
09:05:48 2 believe it's adequate --

09:05:49 3 THE COURT: Well, I think at this point, since  
09:05:50 4 I haven't read it, I'm going to do it in the final  
09:05:53 5 instructions. I think that's the key point, so I'll do it  
09:05:57 6 then.

09:05:59 7 MR. WEINBERGER: Your Honor, for purposes of  
09:06:03 8 planning, as I understand, the defendants intend to call one  
09:06:13 9 pharmacist each, Cook and -- yes, and Stossel, and they  
09:06:23 10 intend to play the deposition of Deborah Mack.

09:06:27 11 Is there anybody else -- any other depositions --

09:06:30 12 THE COURT: I thought there was one other  
09:06:32 13 short deposition.

09:06:34 14 MR. STOFFELMAYR: Ashley.

09:06:37 15 MR. WEINBERGER: You're going to do Ashley?

09:06:43 16 Okay. Perhaps now's a time to raise this one issue  
09:06:46 17 with respect to Amy. Is it Amy Stossel who is the Walgreens  
09:06:53 18 pharmacist, who is going to testify?

09:06:55 19 Her husband, who passed away from cancer about a year,  
09:06:59 20 year and a half ago, was also a Walgreens pharmacist, whose  
09:07:03 21 name has come up during the course of this testimony. And  
09:07:08 22 from what we understand, there -- Walgreens appropriately  
09:07:17 23 did some things to help out the Stossel family and  
09:07:19 24 recognized him, et cetera, et cetera. And so we're going to  
09:07:23 25 ask for a -- I'm sorry.

09:07:25 1 MR. STOFFELMAYR: It's not going to come up.

09:07:26 2 MR. WEINBERGER: Not going to come up. Okay.

09:07:28 3 All right. Takes care of that.

09:07:35 4 THE COURT: Was there one other defense expert  
09:07:36 5 or maybe that was Mr. Hill? I thought --

09:07:41 6 MR. WEINBERGER: Well, they had indicated the  
09:07:42 7 possibility of calling an additional expert and have told us  
09:07:45 8 over -- a Dr. Kessler.

09:07:47 9 THE COURT: Right, Dr. Kessler.

09:07:49 10 MR. WEINBERGER: Right. And they've told us  
09:07:51 11 they're not going to be calling him.

09:07:52 12 THE COURT: Okay. I did remember correctly.

09:07:54 13 MR. WEINBERGER: We do intend to call, very  
09:07:57 14 briefly, Carmen Catizone by videoconferencing, probably  
09:08:05 15 first thing tomorrow morning as a rebuttal witness, a short  
09:08:15 16 rebuttal.

09:08:15 17 THE COURT: Okay. So it looks like the  
09:08:17 18 defendants are going to finish today. We've got -- or  
09:08:21 19 tomorrow?

09:08:22 20 MR. STOFFELMAYR: Tomorrow morning at the  
09:08:23 21 latest.

09:08:23 22 THE COURT: All right. Tomorrow morning and  
09:08:24 23 then we'll have Mr. Catizone. So it looks like we should  
09:08:29 24 most likely conclude the testimony tomorrow.

09:08:31 25 MR. WEINBERGER: Yes, Your Honor.

09:08:31 1 THE COURT: All right. Fine.

09:08:34 2 Okay. We can bring in the jury.

09:08:37 3 (Brief pause in proceedings.)

09:10:10 4 (Jury returned to courtroom at 9:10 a.m.)

09:10:39 5 THE COURT: Okay. Good morning, ladies and  
09:10:41 6 gentlemen. Everyone can be seated.

09:10:45 7 MS. SWIFT: May it please the Court.

09:10:46 8 THE COURT: I hope everyone had a good  
09:10:48 9 weekend.

09:10:49 10 Yes, Ms. Swift. Yes.

09:10:51 11 MS. MILLER: Good morning, Your Honor. Good  
09:10:53 12 morning, ladies and gentlemen of the jury.

09:10:55 13 My name is Sasha Miller, and I represent CVS. CVS  
09:10:58 14 calls Kenneth Cook.

09:11:00 15 THE COURT: All right. Mr. Cook, if you could  
09:11:02 16 please raise your hand, please.

09:11:04 17 Do you swear or affirm that the testimony you are  
09:11:06 18 about to give will be the truth, the whole truth, and  
09:11:08 19 nothing but the truth under pain and penalty of perjury?

09:11:10 20 THE WITNESS: Yes, sir.

09:11:11 21 THE COURT: Thank you. And you may remove  
09:11:13 22 your mask while testifying, please.

23

24

25

**Cook - Direct/Miller**DIRECT EXAMINATION OF KENNETH COOK

09:11:13 1

09:11:24 2

BY MS. MILLER

09:11:24 3

**Q** Good morning, Mr. Cook.

09:11:25 4

**A** Good morning.

09:11:25 5

**Q** Let's start off with are you a pharmacist?

09:11:28 6

**A** Yes, I am.

09:11:30 7

**Q** And do you work for CVS?

09:11:31 8

**A** I do.

09:11:32 9

**Q** What is your current position with CVS?

09:11:36 10

**A** As of last Monday, I am now a district leader with CVS

09:11:40 11

Pharmacy.

09:11:40 12

**Q** And what are your responsibilities as a district

09:11:42 13

leader?

09:11:42 14

**A** I oversee 14 CVS pharmacies as well as two CVS

09:11:48 15

pharmacies inside of Target and am responsible just for

09:11:51 16

their general operations.

09:11:52 17

**Q** And where is the area that those stores are located,

09:11:56 18

generally?

09:11:56 19

**A** Canton area, Canton, Ohio.

09:11:59 20

**Q** Now, prior to last Monday when you became a district

09:12:03 21

leader, were you a pharmacist working for CVS?

09:12:07 22

**A** That is correct.

09:12:08 23

**Q** And for how long did you work as a pharmacist for CVS?

09:12:10 24

**A** A little over nine years.

09:12:11 25

**Q** And where were the CVS pharmacies where you worked?



**Cook - Direct/Miller**

09:12:15 1 **A** I worked at five pharmacies in Lake County and two  
09:12:21 2 pharmacies in Cuyahoga County.

09:12:22 3 **Q** So primarily when you were working for CVS as a  
09:12:24 4 pharmacist, your stores were located in Lake County?

09:12:27 5 **A** Correct.

09:12:28 6 When I first graduated, I did work for a couple months  
09:12:30 7 in Pennsylvania.

09:12:32 8 **Q** Now, let's back up a little more and tell the jury a  
09:12:35 9 little more about you.

09:12:36 10 Where were you born?

09:12:37 11 **A** I was born right here in Mayfield Heights at Hillcrest  
09:12:42 12 Hospital. Same hospital my son, who's turning five on  
09:12:44 13 Friday, was actually born at. So things kind of came full  
09:12:49 14 circle at that hospital for me.

09:12:50 15 **Q** And are your parents from Ohio as well?

09:12:52 16 **A** Yes.

09:12:53 17 **Q** Do you have any siblings?

09:12:55 18 **A** I do. I have a sister, who's one year older than me  
09:12:59 19 and a brother who is nine years my junior.

09:13:01 20 **Q** And where did you grow up?

09:13:02 21 **A** I spent the first 12 years of my life in Wickliffe,  
09:13:05 22 Ohio, and right before high school, my family moved to  
09:13:08 23 Mentor, Ohio.

09:13:08 24 **Q** Did you attend high school in Mentor?

09:13:10 25 **A** No. I went to St. Ignatius high school right here in

**Cook - Direct/Miller**

09:13:15 1 Cleveland.

09:13:15 2 **Q** And when did you graduate from St. Ignatius?

09:13:18 3 **A** 2006.

09:13:19 4 **Q** So is it fair to say you spent your entire childhood  
09:13:21 5 in Lake County?

09:13:22 6 **A** That is correct.

09:13:23 7 **Q** What did you do after you graduated from St. Ignatius?

09:13:27 8 **A** I went to Ducane University to attend pharmacy school.

09:13:33 9 **Q** And where is you Ducane located?

09:13:35 10 **A** Pittsburgh, Pennsylvania.

09:13:37 11 **Q** Did you have any hesitation about moving to  
09:13:39 12 Pittsburgh?

09:13:39 13 **A** I -- as a loyal Browns fan, I did. In two of the five  
09:13:46 14 years I lived in Pittsburgh, the Steelers won two Super  
09:13:51 15 Bowls but as a true Browns fan, I was always looking forward  
09:13:53 16 to the draft and next year. So I finally got to let them  
09:13:56 17 have it a little bit last year, so it all paid off in the  
09:13:59 18 end.

09:13:59 19 **Q** When did you graduate from Ducane?

09:14:01 20 **A** May of 2012.

09:14:03 21 **Q** And what was your degree you had?

09:14:05 22 **A** I had a doctor of pharmacy degree.

09:14:07 23 **Q** Is that the degree you need in order to practice as a  
09:14:10 24 pharmacist?

09:14:10 25 **A** Correct, yes.

**Cook - Direct/Miller**

09:14:12 1 **Q** And when you applied to Ducane, did you know you  
09:14:14 2 wanted to be a pharmacist?

09:14:16 3 **A** At the time of my application process, I was on the  
09:14:19 4 fence between being a pharmacist and engineering school.

09:14:25 5 **Q** And you -- but you applied to Ducane because you knew  
09:14:28 6 that they had a pharmacy program; is that right?

09:14:31 7 **A** That is correct.

09:14:31 8 **Q** What made you eventually decide to become a  
09:14:34 9 pharmacist?

09:14:35 10 **A** So growing up, I had a close friend, whose mom was a  
09:14:38 11 pharmacist for what at the time was Revco, which later would  
09:14:41 12 become CVS Pharmacy.

09:14:43 13 Hearing her talk about her work in the community was  
09:14:45 14 just very rewarding to me, coupled with, you know, the job  
09:14:50 15 demand and my love of helping people, you know, getting out  
09:14:54 16 there to help the community as well as my love of chemistry  
09:15:00 17 and math all pointed me in the direction of pharmacy.

09:15:03 18 **Q** So were you drawn to pharmacy in part because it would  
09:15:06 19 allow you to interact with people daily?

09:15:08 20 **A** Absolutely.

09:15:08 21 **Q** Let's talk a little bit about your pharmacy education  
09:15:11 22 and Ducane and sort of the subjects you studied. How many  
09:15:14 23 years was the program?

09:15:15 24 **A** It was a six-year program.

09:15:17 25 **Q** And did you have -- was there a course work element to

**Cook - Direct/Miller**

09:15:21 1 the program?

09:15:21 2 **A** Yes. There was five years of lecture course work as  
09:15:26 3 part of that six-year program.

09:15:28 4 **Q** And what are some of the courses that you took?

09:15:30 5 **A** I mean, we took courses, you know, from  
09:15:34 6 pre-requisites, such as, you know, calculus, organic  
09:15:37 7 chemistry, chemistry, and then later on, to sum it up, it  
09:15:43 8 would be called pharmacotherapy where we learned about  
09:15:45 9 disease states, drugs in the disease states, how to treat  
09:15:47 10 them, how they work on a chemical level. I won't go into  
09:15:50 11 too much detail.

09:15:52 12 **Q** Did you also take some classes in pharmacy law?

09:15:54 13 **A** I did. We took two classes in pharmacy law at my time  
09:15:58 14 at Ducane.

09:16:00 15 **Q** And did your pharmacy law courses cover corresponding  
09:16:04 16 responsibility?

09:16:04 17 **A** Yes, to the best of my knowledge, they did.

09:16:06 18 **Q** Did you take a class on pain management at Ducane?

09:16:08 19 **A** Yes, I did.

09:16:10 20 **Q** And did that class discuss the risks of pain medicine?

09:16:16 21 **A** Yes.

09:16:16 22 **Q** Did you learn about the chemistry as well of  
09:16:19 23 prescription opioid medications?

09:16:20 24 **A** Yes.

09:16:21 25 **Q** And did you learn about the risks of addiction?

**Cook - Direct/Miller**

09:16:23 1 **A** Yes.

09:16:24 2 **Q** Were you also taught about the risks of overdose  
09:16:27 3 associated with prescription --

09:16:29 4 **A** Yes.

09:16:30 5 **Q** -- opioids.

09:16:31 6 Now, you mentioned that you -- for five years, you  
09:16:35 7 were engaged in course work. Did you also do something  
09:16:38 8 called rotations?

09:16:39 9 **A** Yes, that is correct.

09:16:39 10 **Q** And can you tell the jury a little bit about what a  
09:16:42 11 rotation is?

09:16:42 12 **A** Sure.

09:16:43 13 So my last year, my sixth year of pharmacy school, we  
09:16:46 14 went into a variety of practice settings, from hospitals,  
09:16:51 15 you know, in addition to the community pharmacy, just  
09:16:54 16 variety of pharmacy settings to kind of experience, you  
09:16:58 17 know, different areas of pharmacy before we graduated and  
09:17:00 18 made any career decisions.

09:17:02 19 My joke I like to tell is we paid the school to work  
09:17:05 20 for free that year.

09:17:07 21 **Q** And did you enjoy that practical aspect of your  
09:17:13 22 pharmacy education?

09:17:14 23 **A** Absolutely. 100 percent.

09:17:16 24 **Q** And why was that?

09:17:16 25 **A** As I mentioned before, getting to see different areas

**Cook - Direct/Miller**

09:17:18 1 of pharmacy. I worked in the neonatal intensive care unit,  
09:17:23 2 pediatric intensive care unit, and it was just very  
09:17:27 3 rewarding work.

09:17:28 4 **Q** And was there another component of your education that  
09:17:33 5 involved interning?

09:17:34 6 **A** Yes.

09:17:34 7 So part of licensure requirements, both in Ohio and  
09:17:39 8 Pennsylvania, was completion of internship hours. So I  
09:17:42 9 worked as an intern throughout my years with CVS Pharmacy.

09:17:46 10 **Q** And so did you intern with CVS throughout the time  
09:17:50 11 that you were at Ducane?

09:17:52 12 **A** While I was at school, I worked predominantly over  
09:17:56 13 summers and extended holiday breaks, not so much through the  
09:17:59 14 actual school year.

09:18:00 15 **Q** And where were the CVS pharmacies located where you  
09:18:03 16 interned?

09:18:03 17 **A** Majority of them -- majority of that time that I  
09:18:06 18 interned was at the Mentor, Ohio, store, and then when I was  
09:18:09 19 living outside of Buffalo at, you know, for a year, I worked  
09:18:13 20 as an intern in there as well.

09:18:15 21 **Q** And why were you in New York for that year?

09:18:17 22 **A** My wife was actually finishing up pharmacy school in  
09:18:21 23 Buffalo.

09:18:21 24 **Q** So was your first job with CVS actually as an intern?

09:18:24 25 **A** That is correct.

**Cook - Direct/Miller**

09:18:25 1 **Q** And approximately when were you -- did you start  
09:18:28 2 interning for CVS?

09:18:29 3 **A** May of 2008, roughly.

09:18:34 4 **Q** What did you do as an intern?

09:18:37 5 **A** My primary responsibilities were, you know, assisting  
09:18:40 6 the pharmacists with just day-to-day operations of the  
09:18:44 7 pharmacy. So inputting prescriptions, you know, the  
09:18:46 8 processing of prescriptions, you know, getting to know  
09:18:50 9 patients.

09:18:50 10 As an intern, I had a little more responsibilities  
09:18:53 11 than technician. You know, later on in my career as an  
09:18:57 12 intern, I was able to vaccinate, but predominantly I was  
09:18:57 13 part of the pharmacy team, assisting patients, get their  
09:19:05 14 medications.

09:19:05 15 **Q** And you worked in conjunction with the pharmacist?

09:19:07 16 **A** Absolutely.

09:19:07 17 **Q** And also the pharmacy technicians?

09:19:10 18 **A** That is correct.

09:19:10 19 **Q** While you're interning at the CVS in Mentor, Ohio, did  
09:19:14 20 you have an occasion to interact with Lake County Narcotics?

09:19:18 21 **A** I did.

09:19:20 22 **Q** And can you tell the jury about what happened?

09:19:24 23 **A** It was a funny story. I believe it was my first  
09:19:26 24 summer there. A patient had dropped off a prescription for  
09:19:30 25 a high amount of pain medication for an opioid pain

**Cook - Direct/Miller**

09:19:34 1 medication, you know, said to us that she hasn't filled here  
09:19:37 2 before, she was to the best of my knowledge from out of town  
09:19:40 3 and didn't have insurance.

09:19:41 4 So, you know, the potential red flags, you know,  
09:19:44 5 started building up even as an intern, you know, in the  
09:19:47 6 first couple months on the job, I was able to recognize  
09:19:51 7 that.

09:19:51 8 So I brought it up to the attention of my pharmacist  
09:19:53 9 on duty at the time. I believe it was Michelle. We reached  
09:19:57 10 out to Lake County Narcotics, who basically, for lack of a  
09:20:01 11 better word, conducted a sting operation in the pharmacy.

09:20:05 12 So when the patient came back to fill the medication,  
09:20:08 13 I had to -- I was tasked with stalling her. I was the one  
09:20:10 14 ringing the register at the time, so very uncomfortable for  
09:20:13 15 me, but I kept her there until Lake County Narcotics could  
09:20:16 16 arrive.

09:20:17 17 They ended up arresting her in the parking lot and  
09:20:20 18 then both my pharmacist and I had to go to the parking lot  
09:20:23 19 to identify that the person in the back of the police car  
09:20:27 20 was, you know, this patient in question. It was a fun day.

09:20:29 21 **Q** Now, shifting gears from that interaction, was there  
09:20:34 22 something else special that happened for you while you were  
09:20:38 23 interning at the Mentor store?

09:20:40 24 **A** Yes. Very much so.

09:20:42 25 **Q** And what happened? Can you share that with the jury?



**Cook - Direct/Miller**

09:20:45 1 **A** Yeah.

09:20:46 2 My first day working there, I walked in because I  
09:20:48 3 needed directions to the drug testing facility as part of  
09:20:52 4 like the pre-employment screening. And there was a  
09:20:54 5 technician working there named Natalie, who gave me  
09:20:58 6 directions -- let's put it this way, I ended up in the right  
09:21:01 7 city but nowhere near where I needed to be, in Willoughby is  
09:21:06 8 where it ended up.

09:21:07 9 I was able to look past that minor infraction. I  
09:21:12 10 ended up marrying her, you know, several years later. It  
09:21:18 11 took me about four months to build up the courage to ask her  
09:21:21 12 out, though.

09:21:21 13 So right when I was ready to go back to the school for  
09:21:23 14 the summer, I finally asked her out and I figured worst case  
09:21:28 15 scenario, if she said no, I would be back at school and  
09:21:31 16 wouldn't have to focus on it so much. But she said yes.

09:21:34 17 **Q** Where did you end up getting married?

09:21:36 18 **A** Willoughby Hills, Ohio.

09:21:38 19 **Q** And where is Natalie from?

09:21:40 20 **A** She's born and raised in Mentor her whole life.  
09:21:44 21 Mentor, Ohio.

09:21:44 22 **Q** Did you and Natalie grow up near each other?

09:21:48 23 **A** So, yeah, funny story, we grew up about a four-minute  
09:21:51 24 drive apart but we went to different high schools,  
09:21:53 25 obviously. So I never knew about her existence until the

**Cook - Direct/Miller**

09:21:56 1 day I walked into that CVS back in May of '08.

09:21:59 2 **Q** And now you've been married for how many years?

09:22:04 3 **A** Nine years.

09:22:05 4 **Q** And how many children --

09:22:06 5 **A** A little over nine. Got to get that right.

09:22:08 6 **Q** You're almost to 10. You're almost to 10.

09:22:11 7 And do you have a family?

09:22:13 8 **A** I do, yes. My parents are still in Northeast Ohio, as  
09:22:18 9 is her family.

09:22:19 10 **Q** And what about children?

09:22:20 11 **A** I have three kids, Emily, who's eight, Ella, who is  
09:22:24 12 six, and as I shared with you earlier, my son Aden, the  
09:22:27 13 youngest, he's going to turn five this Friday.

09:22:29 14 **Q** And tell us a little more about Natalie. What does  
09:22:34 15 she do?

09:22:34 16 **A** She is also a pharmacist with CVS Pharmacy. Her  
09:22:39 17 current job title is a floater pharmacist, meaning she, you  
09:22:42 18 know, fills in across the district where help is needed.

09:22:45 19 She predominantly works now at the Mentor, Ohio,  
09:22:48 20 Target CVS location.

09:22:49 21 **Q** All right.

09:22:50 22 So let's pick back up with so you've met your  
09:22:54 23 soon-to-be wife, you're still in pharmacy school. And what  
09:22:58 24 year did you graduate from Ducane?

09:23:00 25 **A** May of 2012.

**Cook - Direct/Miller**

09:23:02 1 **Q** And after graduation, you had your pharmacy degree.

09:23:06 2 Was there another step you needed to take in order to  
09:23:09 3 become a licensed pharmacist?

09:23:10 4 **A** Yes.

09:23:11 5 So in addition to the degree, I had to pass two  
09:23:13 6 licensing exams, one called the NAPLEX, which is the  
09:23:17 7 National Pharmacy License Examination, and another one was  
09:23:21 8 the law test. It's either the MPJE or MJPE, I apologize, I  
09:23:27 9 forgot which way it goes. But yes, there were two exams I  
09:23:31 10 had to take before I could practice pharmacy.

09:23:33 11 **Q** And so one of those tests you said was a law exam.  
09:23:36 12 Did that cover legal requirements for filling prescriptions?

09:23:38 13 **A** Yes, it did.

09:23:39 14 **Q** And so did you take those two tests while you were  
09:23:42 15 still in Pennsylvania?

09:23:43 16 **A** That is correct.

09:23:44 17 **Q** And did you pass those tests?

09:23:45 18 **A** I did. I procrastinated taking them as long as  
09:23:49 19 possible. My wife signed me up back-to-back days to do  
09:23:52 20 them, so I -- it was a stressful week, but yes.

09:23:56 21 **Q** And ultimately, you became licensed as a pharmacist in  
09:24:00 22 Pennsylvania?

09:24:00 23 **A** That is correct.

09:24:02 24 **Q** What about Ohio?

09:24:04 25 **A** So I went through what's called reciprocity. I

**Cook - Direct/Miller**

09:24:09 1 reciprocated my Pennsylvania license to Ohio. So basically  
09:24:13 2 I transferred my national pharmacy examination score to the  
09:24:16 3 State of Ohio. And then the other requirement I had was to  
09:24:23 4 sit in front of the State Board of Pharmacy for I believe it  
09:24:25 5 was about an eight-hour day where they went over Ohio law,  
09:24:28 6 they went predominantly over OARRS and the OARRS  
09:24:32 7 requirements, and then at the conclusion of that day, I was  
09:24:34 8 granted my license to practice pharmacy in the State of  
09:24:37 9 Ohio.

09:24:37 10 **Q** And so are you currently licensed now in both  
09:24:40 11 Pennsylvania and Ohio?

09:24:41 12 **A** Correct, yes.

09:24:42 13 **Q** Do you also need to take continuing education classes  
09:24:45 14 to maintain your licenses?

09:24:48 15 **A** Yes.

09:24:48 16 **Q** And do you take classes on the legal requirements for  
09:24:51 17 filling prescriptions?

09:24:52 18 **A** Yes.

09:24:53 19 **Q** As well as other --

09:24:55 20 **A** As well as other CE's, yes.

09:24:57 21 **Q** And have you ever been disciplined by the Ohio Board  
09:25:00 22 of Pharmacy?

09:25:00 23 **A** I have not.

09:25:01 24 **Q** Have you ever been disciplined by the Pennsylvania  
09:25:03 25 Board of Pharmacy?

**Cook - Direct/Miller**

09:25:04 1 **A** I have not.

09:25:04 2 **Q** And have you ever had either of your licenses  
09:25:08 3 suspended?

09:25:09 4 **A** No.

09:25:09 5 **Q** What about has -- have either of your licenses been  
09:25:14 6 revoked by either Board of Pharmacy?

09:25:16 7 **A** No.

09:25:20 8 **Q** All right. Let's move now to your work as a CVS  
09:25:22 9 pharmacist.

09:25:23 10 So we already discussed how you interned throughout  
09:25:25 11 pharmacy school. What was your first job as a pharmacist  
09:25:29 12 with CVS?

09:25:30 13 **A** So when I started in Pennsylvania, I was a floater  
09:25:33 14 pharmacist as well, you know, just filling in at stores that  
09:25:36 15 needed help.

09:25:37 16 **Q** And where was that?

09:25:38 17 **A** That was in Pennsylvania. I worked from, anywhere  
09:25:42 18 from Erie, Pennsylvania, to York, Pennsylvania for several  
09:25:46 19 months.

09:25:47 20 **Q** And up until your recent promotion, did you work for  
09:25:51 21 CVS from that first pharmacy job in Pennsylvania until that  
09:25:58 22 recent promotion?

09:25:59 23 **A** Yes, I worked as a pharmacist with CVS, yep.

09:26:02 24 **Q** And at some point, did you leave Pennsylvania and move  
09:26:07 25 back to Ohio?

**Cook - Direct/Miller**

09:26:08 1 **A** Yes.

09:26:09 2 **Q** And where did you move to?

09:26:11 3 **A** We moved right back to Mentor, Ohio. My wife became  
09:26:14 4 pregnant. She didn't ask me about it -- no, but she got  
09:26:18 5 pregnant. And in late 2012, early 2013, we moved back to  
09:26:23 6 Ohio.

09:26:24 7 **Q** And so why did you move back?

09:26:27 8 **A** My wife decided to get pregnant, so...

09:26:32 9 **Q** And after she decided that, did you decide to be  
09:26:37 10 closer to family for --

09:26:38 11 **A** Absolutely.

09:26:39 12 So as I shared earlier, both my parents, her parents  
09:26:42 13 are from Northeast Ohio. Her brother and his family and her  
09:26:46 14 sister and her family. So it's a very tight knit community,  
09:26:52 15 actually all living right in Lake County.

09:26:54 16 **Q** And do you still live in Mentor?

09:26:56 17 **A** I do.

09:26:57 18 **Q** So since moving back to Northeast Ohio, have you  
09:27:04 19 worked primarily at CVS pharmacies in Lake County?

09:27:06 20 **A** Yes, primarily, that is correct.

09:27:08 21 **Q** Have you worked at stores also in Cuyahoga County?

09:27:11 22 **A** Yes. I spent -- best of my knowledge, it was a little  
09:27:14 23 over a year at two separate stores in Cuyahoga County.

09:27:16 24 **Q** And focusing on your Lake County experience, how many  
09:27:21 25 CVS pharmacies have you worked at in Lake County?

**Cook - Direct/Miller**

09:27:23 1 **A** Five different pharmacies.

09:27:25 2 **Q** And what was the first CVS Pharmacy that you worked at  
09:27:29 3 as a pharmacist?

09:27:30 4 **A** It was Store 3356 in Painesville City or sometimes  
09:27:34 5 called Downtown Painesville.

09:27:36 6 **Q** And were you the manager of that pharmacy?

09:27:38 7 **A** Yes, I was the pharmacy manager.

09:27:40 8 **Q** What was your title?

09:27:42 9 **A** Pharmacy manager.

09:27:43 10 **Q** And did you have management responsibility as the  
09:27:50 11 pharmacy manager?

09:27:50 12 **A** Yes.

09:27:51 13 **Q** Did you also fill prescriptions?

09:27:52 14 **A** Yes.

09:27:54 15 **Q** Were you the pharmacy manager of the other Lake County  
09:27:59 16 pharmacies where you worked?

09:28:00 17 **A** Yes, I was.

09:28:01 18 **Q** What was the next CVS Pharmacy you worked at?

09:28:07 19 **A** So following Store 3356, I went to Store 3326 in  
09:28:12 20 Mentor, Ohio, the store that it all began at, where I met my  
09:28:16 21 wife at.

09:28:16 22 **Q** All right.

09:28:18 23 Mr. Pitts, can I have the ELMO, please?

09:28:31 24 BY MS. MILLER:

09:28:32 25 **Q** Mr. Cook, I'm showing you CVS-MDL-4037. Do you

**Cook - Direct/Miller**

09:28:40 1 recognize the CVS store in this photo?

09:28:42 2 **A** Yes, that is store 3326 in Mentor, Ohio.

09:28:45 3 **Q** And how far is the store where you live?

09:28:47 4 **A** I could walk there -- the house I grew up in, I could  
09:28:51 5 walk there in 5 to 10 minutes.

09:28:52 6 **Q** And this, I think you mentioned, is the store where  
09:28:54 7 you met your wife as an intern?

09:28:56 8 **A** Yes, that is correct.

09:29:02 9 **Q** I'm showing you now CVS-MDL-04385.

09:29:15 10 Do you recognize the pharmacy in that photograph?

09:29:18 11 **A** Yes, that is the interior of Store 3326. I can go as  
09:29:22 12 far as to tell you the technician ringing out that patient  
09:29:24 13 of ours right there, her name is Kelsey. I worked with her  
09:29:28 14 for a long time.

09:29:28 15 **Q** So has Kelsey been a pharmacy technician at the Mentor  
09:29:33 16 store for how many years?

09:29:34 17 **A** Several years, to the best of my knowledge, but she  
09:29:37 18 would also help me if I needed, you know, assistance at  
09:29:39 19 another one of my stores. She was always someone willing to  
09:29:42 20 step up.

09:29:43 21 **Q** And after the store in Mentor, what was the next  
09:29:47 22 pharmacy that you went to?

09:29:48 23 **A** Following Mentor, I went to Store 05941, which is in  
09:29:53 24 Painesville on Bacon Road.

09:30:06 25 **Q** Mr. Cook, I'm going to show you -- I'm showing you



**Cook - Direct/Miller**

09:30:14 1 CVS-MDL-04400.

09:30:17 2 Do you recognize the CVS store in this photo?

09:30:21 3 **A** Yes. That is Store 05941 in Painesville, correct.

09:30:26 4 **Q** And where in Painesville is that store located?

09:30:30 5 **A** Bacon Road, also called North Ridge Road.

09:30:33 6 **Q** Was this the second CVS Pharmacy in Painesville that  
09:30:37 7 you worked at?

09:30:38 8 **A** Yes.

09:30:39 9 **Q** And how long did you spend at this Painesville store?

09:30:42 10 **A** Best of my knowledge, it was, I would say a little  
09:30:45 11 over four years.

09:30:46 12 **Q** And after you left the Bacon Road, Painesville  
09:30:52 13 location, where did you go next?

09:30:54 14 **A** So following the Bacon Road location I -- was when I  
09:31:00 15 went to Cuyahoga County for that period of a little over a  
09:31:02 16 year. It was Store 0 -- 3032 in Richmond Heights.

09:31:06 17 **Q** And was there a second store in Cuyahoga County?

09:31:09 18 **A** Yes.

09:31:10 19 So following several months, again, best of my  
09:31:13 20 knowledge, several months at 3032, I went to Store 4350  
09:31:17 21 right in Shaker Square in Cleveland.

09:31:19 22 **Q** And after working at those Cuyahoga County stores, did  
09:31:23 23 you go back to stores in Lake County?

09:31:25 24 **A** That is correct.

09:31:26 25 **Q** And can you just walk the jury through the next three

**Cook - Direct/Miller**

09:31:31 1 stores you worked at?

09:31:32 2 **A** Certainly.

09:31:33 3 So when I was done at -- in the Shaker Square store, I  
09:31:37 4 went to Store 7686, Mentor on the Lake, Ohio. I was there  
09:31:43 5 for a period of several months. And then I went back to the  
09:31:46 6 other Mentor location, which we referenced earlier, Store  
09:31:50 7 3326.

09:31:53 8 Again, I was there for a period of several months, and  
09:31:55 9 then ultimately ended up at Store 4351 in Willoughby, Ohio.

09:32:00 10 **Q** Now, over the years at these Lake County pharmacies  
09:32:04 11 where you worked, did you work with other pharmacists who  
09:32:07 12 were also from Northeast Ohio?

09:32:11 13 **A** Yes.

09:32:11 14 **Q** And were those pharmacists also making their homes and  
09:32:16 15 raising their families in Northeast Ohio?

09:32:18 16 **A** Yes.

09:32:22 17 **Q** Let's talk a little bit about what it actually is like  
09:32:27 18 to be a pharmacist. Okay?

09:32:31 19 What do you like most about being a pharmacist?

09:32:35 20 **A** To sum it up, quite simply, it's helping the public,  
09:32:40 21 helping you fine ladies and gentlemen, whether, you know,  
09:32:41 22 you need a medication filled, a recommendation on an  
09:32:44 23 over-the-counter product, even sometimes just to come in and  
09:32:47 24 talk about your day while you're shopping, it's that  
09:32:50 25 interaction with the public that really gives me that

**Cook - Direct/Miller**

09:32:52 1 immense job satisfaction on a day-to-day basis.

09:32:55 2 **Q** Now, let's move to talking a little bit about your  
09:32:58 3 patients and how you interact with them and know them.

09:33:01 4 Do you know some of your patients even before they  
09:33:04 5 would walk into your pharmacy?

09:33:06 6 **A** That is correct.

09:33:07 7 So, you know, minus my time in Pittsburgh and a year  
09:33:11 8 in New York, a little over a year in New York, I spent the  
09:33:15 9 better part of a quarter century in Lake County. So prior  
09:33:18 10 to starting at any store, I mean, I would see patients that  
09:33:21 11 I recognize from elementary school, high school, you know,  
09:33:25 12 my daughter's softball coaches, neighbors, friends,  
09:33:29 13 relatives, absolutely.

09:33:31 14 Every store I was at there was, you know, a handful of  
09:33:33 15 patients that I already knew.

09:33:35 16 **Q** And was -- so is that pretty common over the course of  
09:33:39 17 your career as a pharmacist?

09:33:40 18 **A** Yes.

09:33:40 19 **Q** And are there other patients that you came to know  
09:33:44 20 after they started filling their prescriptions at your  
09:33:48 21 pharmacies?

09:33:49 22 **A** Yes.

09:33:50 23 **Q** And can you, you know, tell the jury a little bit more  
09:33:54 24 about how you got to know them?

09:33:56 25 **A** Yeah.

**Cook - Direct/Miller**

09:33:57 1           So, I mean, honestly, it usually started over small  
09:34:01 2 talk, just someone would come in with a Browns shirt or an  
09:34:05 3 Indians shirt, Guardians shirt now, or a Cavs, you know,  
09:34:08 4 Ohio State shirt, you just talk small talk, whether it be  
09:34:12 5 about sports, weather.

09:34:14 6           When you got to see these patients more and more  
09:34:17 7 often, so every month for a refill or every three months or  
09:34:20 8 every couple weeks, you would learn more about them from  
09:34:22 9 just simple conversations at the counter, at the register,  
09:34:25 10 even on the phone.

09:34:26 11           I got to know about births in their family, deaths,  
09:34:29 12 weddings, you know, all sorts of life events for them.

09:34:32 13       **Q**     And do you also talk about their medical conditions?

09:34:37 14       **A**     Of course, yes.

09:34:38 15       **Q**     And did you talk to them about treatments that they  
09:34:42 16 were -- that they were receiving from their doctors?

09:34:44 17       **A**     Yes.

09:34:46 18       **Q**     Were most of your patients local residents?

09:34:49 19       **A**     Yes, I would say the majority of them were.

09:34:53 20       **Q**     And your patients were members of your community?

09:34:55 21       **A**     Yes.

09:34:56 22       **Q**     For the most part?

09:34:57 23       **A**     That is correct.

09:34:57 24           To this day, I can't go to Lowe's, Giant Eagle, Sam's  
09:35:01 25 Club, you name it, without seeing someone that I know from

**Cook - Direct/Miller**

09:35:05 1 working all my years as a pharmacist.

09:35:07 2 **Q** And were there patients you would see on a regular  
09:35:09 3 basis?

09:35:10 4 **A** Yes.

09:35:10 5 **Q** And would patients bring in prescriptions for all  
09:35:13 6 kinds of medications?

09:35:15 7 **A** Absolutely.

09:35:17 8 **Q** How about entire families, would entire families bring  
09:35:21 9 their prescriptions to your pharmacies?

09:35:23 10 **A** Oh, yes. I got to know, yeah, children, wives,  
09:35:27 11 husbands, grandparents, absolutely.

09:35:30 12 **Q** And over the years working in Lake County, have you  
09:35:35 13 become generally familiar with some of the prescribers that  
09:35:39 14 fill prescriptions at your pharmacies?

09:35:41 15 **A** Yes. I would say I'm generally familiar with those  
09:35:46 16 prescribers.

09:35:47 17 **Q** And how would you get that information?

09:35:48 18 **A** Just, number one, through conversations with the  
09:35:52 19 offices, conversations with patients about the doctor, you  
09:35:56 20 know, getting to see, like, you can tell who's the  
09:35:59 21 cardiologist because they're prescribing, you know, a lot of  
09:36:03 22 heart medication.

09:36:03 23 So honestly, it's just through conversation,  
09:36:08 24 communications, and just experience.

09:36:09 25 **Q** Does knowing your patients help you in your practice

**Cook - Direct/Miller**

09:36:12 1 as a pharmacist?

09:36:13 2 **A** It absolutely does.

09:36:15 3 **Q** And how?

09:36:19 4 **A** You get to know, you know, what patients -- I mean, it  
09:36:23 5 could be as simple as a drug allergy, you know, and then  
09:36:25 6 they come asking for an over-the-counter recommendation and  
09:36:28 7 oh, Mrs. Jones, I forgot, or that's right, you can't take  
09:36:34 8 Claritin, for example.

09:36:34 9 You get to know their fears about taking medication  
09:36:37 10 and how to work with them to ultimately, you know, get them  
09:36:40 11 on their path to better health.

09:36:42 12 **Q** And does knowing your patients also help you in  
09:36:45 13 filling controlled substance prescriptions?

09:36:47 14 **A** Yes.

09:36:57 15 **Q** All right. Let's move now to corresponding  
09:36:59 16 responsibility.

09:36:59 17 The jury has heard a lot about corresponding  
09:37:02 18 responsibility. And just stepping back, the difference  
09:37:05 19 between controlled and non-controlled substances, you're  
09:37:07 20 familiar with those two terms; right?

09:37:10 21 **A** Yes, of course.

09:37:11 22 **Q** Can you give the jury some examples of non-controlled  
09:37:14 23 substances?

09:37:14 24 **A** So non-controlled medications would be your standard  
09:37:18 25 maybe like a blood pressure medication, Lisinopril,

**Cook - Direct/Miller**

09:37:24 1 Metoprolol, Lipitor, Flonase nasal spray,  
09:37:26 2 hydrochlorothiazide, like I mentioned Claritin earlier, the  
09:37:30 3 vast majority of prescriptions on our shelves at CVS are for  
09:37:34 4 non-controlled substances.

09:37:34 5 **Q** And would you say the vast majority of prescriptions  
09:37:38 6 you've filled over your career as a pharmacist were for  
09:37:41 7 non-controlled substances?

09:37:41 8 **A** Correct. Yes, I would say that.

09:37:43 9 **Q** Now, let's move into corresponding responsibility so  
09:37:50 10 you can tell the jury a little bit about how you exercise  
09:37:53 11 corresponding responsibility.

09:37:54 12 **A** Okay.

09:37:57 13 **Q** Do you fulfill corresponding responsibility -- your  
09:38:01 14 corresponding responsibility on every controlled substance  
09:38:03 15 prescription?

09:38:03 16 **A** Yes.

09:38:04 17 **Q** And how do you go about doing that?

09:38:08 18 **A** Corresponding responsibility, I guess, you know, to me  
09:38:14 19 it starts with a definition is when a patient presents a  
09:38:17 20 prescription for a controlled substance, you know, resolving  
09:38:20 21 any red flags that are discovered prior to that medication  
09:38:23 22 ultimately reaching the hands of the public.

09:38:25 23 **Q** And is part of your review also to see whether there  
09:38:32 24 are any potential red flags?

09:38:36 25 **A** That is correct, yes.

**Cook - Direct/Miller**

09:38:37 1 **Q** And how do you go about doing that?

09:38:42 2 **A** I mean, there's -- every controlled medication that's  
09:38:46 3 handed to me, you know, has that risk of abuse, has that  
09:38:50 4 risk of, you know, if it's in the wrong hands, you know,  
09:38:53 5 it's not a good situation.

09:38:54 6 So how do I go about resolving red flags was the  
09:38:59 7 question?

09:38:59 8 **Q** No. Let me ask -- let me ask this. Let's start at  
09:39:02 9 the beginning.

09:39:04 10 How do you decide what information to look at when  
09:39:07 11 you're presented with a controlled substance prescription?

09:39:10 12 **A** Sure.

09:39:11 13 So, number one, I mean, before we do anything with a  
09:39:14 14 prescription, when they walk up with it, one of the signs we  
09:39:18 15 look at is, you know, signs of opioid addiction, signs of,  
09:39:23 16 you know, dependence, withdrawal, patients who are  
09:39:27 17 demanding, might have, you know, pinpoint pupils. If we can  
09:39:30 18 identify those signs like right off the bat before I even  
09:39:33 19 really put the prescription in my hand, you know, I know  
09:39:36 20 that there is a potential red flag that might need to be  
09:39:40 21 resolved.

09:39:41 22 Other than that, you know, there's -- really on a  
09:39:44 23 case-by-case basis depends, you know, on what factors I'm  
09:39:49 24 looking for or what might stand out on that prescription to  
09:39:52 25 know which route to go to resolve any potential red flag.



**Cook - Direct/Miller**

09:39:57 1 **Q** What information might you look at when you evaluate a  
09:40:05 2 controlled substance prescription?

09:40:06 3 **A** Well, the information, number one, like on the face of  
09:40:09 4 the prescription, is it, you know, a prescriber that I'm  
09:40:14 5 aware of, is it a patient that I'm aware of, you know,  
09:40:18 6 moving into Rx Connect we can -- which is our pharmacy  
09:40:23 7 operating system, I'm sorry, we can see like is this patient  
09:40:26 8 from, you know, like 3 hours away, is it a Lake County  
09:40:29 9 resident.

09:40:30 10 There's so many things we look at. And I hate to keep  
09:40:34 11 saying a case-by-case basis, but all of these checks are  
09:40:36 12 kind of going on in my mind and my staff's mind at the same  
09:40:39 13 time in evaluation every, you know, controlled medication  
09:40:42 14 that gets presented to us.

09:40:43 15 **Q** And you talked about it's a case-by-case basis. So  
09:40:48 16 you really have to look at the specific circumstances  
09:40:51 17 presented by that prescription that's right in front of you;  
09:40:54 18 right?

09:40:54 19 **A** Absolutely.

09:40:55 20 **Q** And you have different information available to you.  
09:40:58 21 Let's start with Rx Connect, which I think you mentioned.

09:41:04 22 Where do you go to in Rx Connect to see information  
09:41:08 23 about a patient?

09:41:09 24 **A** I would access the patient's profile.

09:41:12 25 **Q** And let's talk about some of the information you can

**Cook - Direct/Miller**

09:41:14 1 see in Rx Connect about a patient. Okay?

09:41:17 2 Can you see the patient's address?

09:41:19 3 **A** Yes. I can see their current address and last known  
09:41:24 4 addresses as well. So if there's a patient who summers in  
09:41:27 5 Florida, as is very common in Northeast Ohio, or who moved  
09:41:30 6 up here, I can see any other addresses as well.

09:41:32 7 **Q** And can you see whether the patient has insurance?

09:41:36 8 **A** Yes.

09:41:36 9 **Q** In Rx Connect?

09:41:38 10 **A** Yes.

09:41:39 11 **Q** Can you see the patient's age?

09:41:40 12 **A** Yes.

09:41:42 13 **Q** And does the Rx Connect patient profile provide you  
09:41:48 14 with data on the patient's prescription history?

09:41:52 15 **A** Yes.

09:41:53 16 **Q** And how far back does that information go?

09:41:57 17 **A** It goes two years back in the patient profile.

09:42:00 18 **Q** And what prescriptions can you see?

09:42:04 19 **A** Every prescription filled at CVS Pharmacy location.

09:42:08 20 **Q** And so that would be both controlled substances and  
09:42:11 21 non-controlled substances?

09:42:12 22 **A** Correct.

09:42:19 23 **Q** Can you see the doctor's name?

09:42:20 24 **A** Yes.

09:42:20 25 **Q** Can you see the doctor's address?

**Cook - Direct/Miller**

09:42:23 1 **A** Not on the simple profile screen, but by just  
09:42:28 2 selecting "V" to view and selecting the prescription I want  
09:42:31 3 to view, then I can.

09:42:32 4 **Q** And that information would be right there?

09:42:33 5 **A** Correct.

09:42:34 6 **Q** Can you see the doctor's DEA number?

09:42:37 7 **A** Following the steps I just listed, yes, hitting "V" to  
09:42:40 8 view it, yes.

09:42:41 9 **Q** What happens if the doctor does not have a valid DEA  
09:42:43 10 number?

09:42:44 11 **A** So when I'm typing a prescription and the doctor does  
09:42:47 12 not have a valid DEA number, my Rx Connect system has what's  
09:42:52 13 called a block. I cannot proceed with inputting that  
09:42:54 14 prescription.

09:42:58 15 **Q** Which means that you would be unable to fill a  
09:43:00 16 prescription for a prescriber that does not have a valid DEA  
09:43:04 17 number?

09:43:04 18 **A** That is correct. There's no way that I -- you know,  
09:43:08 19 to override that, no way around it. It just cannot be  
09:43:11 20 filled.

09:43:11 21 **Q** And I just want to clarify one thing. When you said  
09:43:14 22 you can look back and see the prescription history for a  
09:43:17 23 patient for all the medications filled for the last two  
09:43:20 24 years, is that chain wide?

09:43:22 25 **A** Yes. So I can see, yes, any CVS pharmacy location.

**Cook - Direct/Miller**

09:43:31 1 **Q** Do you also consider information you might already  
09:43:34 2 know about patients?

09:43:36 3 **A** Yes. That does play a role.

09:43:45 4 **Q** Does Rx Connect provide you with the information you  
09:43:48 5 need to identify potential red flags?

09:43:50 6 **A** Yes.

09:43:51 7 **Q** Has it always?

09:43:52 8 **A** Yes.

09:43:55 9 **Q** What additional information might you look to outside  
09:44:00 10 of the categories that we already discussed?

09:44:03 11 **A** So outside of, you know, like the patient appearance  
09:44:07 12 as well, you know, for signs of diversion, outside of what  
09:44:10 13 we just listed in Rx Connect, we also have -- I'm sure you  
09:44:14 14 guys have heard a lot about it -- is OARRS, which is  
09:44:18 15 integrated right into your pharmacy work flow where we can  
09:44:21 16 see, you know, controlled substance medications that are  
09:44:23 17 filled at any CVS -- or, excuse me, any pharmacy in the  
09:44:28 18 State of Ohio.

09:44:28 19 **Q** And do you regularly check OARRS?

09:44:35 20 **A** I do.

09:44:37 21 **Q** And can you tell the jury a little bit more about how  
09:44:40 22 OARRS helps you in your review of controlled substance  
09:44:43 23 prescriptions?

09:44:43 24 **A** Yes.

09:44:44 25 OARRS, again -- and what we're talking about here is

**Cook - Direct/Miller**

09:44:48 1 just a tool in the toolkit for me when I'm filling a  
09:44:52 2 controlled substance medication. Definitely one of the more  
09:44:54 3 important tools, with just a couple. You know, quick key  
09:44:57 4 strokes, I can see every controlled substance filled for  
09:44:59 5 that patient in the State of Ohio.

09:45:03 6 It tells me information not only the drug name, the  
09:45:06 7 quantity, the day's supply, it goes so far as to tell me the  
09:45:11 8 doctor who prescribed it, where that medication was filled  
09:45:13 9 and even like the insurance that was applied when they  
09:45:15 10 filled that medication.

09:45:16 11 **Q** So let me follow up a little bit. Let me go to Rx  
09:45:22 12 Connect for a second and that prescription history.

09:45:24 13 Does Rx Connect provide you for prescriptions filled  
09:45:28 14 at CVS pharmacies the same type of information about a  
09:45:32 15 particular prescription, like drug name?

09:45:34 16 **A** Correct, yes.

09:45:36 17 **Q** What other information does Rx Connect provide you for  
09:45:41 18 specific prescriptions filled at CVS pharmacies?

09:45:45 19 **A** I can see the prescription number, the day it was  
09:45:47 20 filled, the amount that the patient paid for the medication,  
09:45:51 21 the insurance that was applied, be it, you know, cash,  
09:45:55 22 insurance, Good RX. I can see the doctor's name, the  
09:46:01 23 directions, how many it was filled for -- I'm sorry if I'm  
09:46:07 24 repeating myself.

09:46:08 25 There's a lot of information, but I think that covers

**Cook - Direct/Miller**

09:46:10 1 most of it.

09:46:10 2 **Q** And so we talked about OARRS. In addition to OARRS,  
09:46:14 3 what other information might you seek when you're evaluating  
09:46:20 4 controlled substance prescriptions?

09:46:21 5 **A** Yes.

09:46:21 6 So in addition to OARRS and the information in Rx  
09:46:25 7 Connect, conversations with the prescriber regarding  
09:46:28 8 potential red flags with the prescription and/or  
09:46:31 9 conversations with the patient, him or herself regarding  
09:46:35 10 potential red flags also, you know, play a role in filling  
09:46:37 11 that medication.

09:46:39 12 **Q** So after you've considered some amount of this  
09:46:43 13 information in reviewing a particular prescription on a  
09:46:47 14 case-by-case basis, what happens next?

09:46:51 15 **A** Well, if, you know, I've identified no red flags, you  
09:46:55 16 know, the and/or the red flags that did come up had been  
09:46:58 17 resolved, we would proceed with, you know, filling that  
09:47:01 18 medication for that patient.

09:47:03 19 If I had any reason to suspect, you know, misuse or I  
09:47:09 20 had a red flag that I couldn't resolve, I would, you know,  
09:47:12 21 practice my refusal to fill as part of corresponding  
09:47:15 22 responsibility.

09:47:23 23 **Q** In making your decision of whether to fill or not fill  
09:47:28 24 a controlled substance prescription, do you use your  
09:47:32 25 professional judgment as a pharmacist?

**Cook - Direct/Miller**

09:47:33 1 **A** Yes.

09:47:39 2 **Q** And, again, those decisions you make based on a  
09:47:41 3 case-by-case basis depending on the prescription and  
09:47:46 4 circumstances before you?

09:47:47 5 **A** That is absolutely correct.

09:47:49 6 **Q** All right.

09:47:50 7 We talked a little just now about various tools that  
09:47:56 8 you use in exercising your corresponding responsibility and  
09:48:00 9 I just want to follow up a little bit.

09:48:04 10 Does CVS provide you with those tools to help you  
09:48:09 11 evaluate prescriptions?

09:48:10 12 **A** Yes.

09:48:11 13 **Q** And do you consider Rx Connect one of those tools?

09:48:14 14 **A** Yes. Absolutely.

09:48:15 15 Like I said, I can identify fill histories, you know,  
09:48:19 16 where the patient is from, amongst other things. Absolutely  
09:48:22 17 it's part of the tools -- part of the toolkit.

09:48:24 18 **Q** And does Rx Connect also have alerts?

09:48:29 19 **A** Yes.

09:48:30 20 **Q** And can you give an example or two of an alert that Rx  
09:48:37 21 Connect has?

09:48:37 22 **A** So one -- an alert that might pop up, if a patient  
09:48:41 23 goes -- presents with me a prescription for a controlled  
09:48:44 24 medication that the system flags as too early, it will not  
09:48:48 25 let me proceed with filling or, you know, my technician, it

**Cook - Direct/Miller**

09:48:52 1 will not allow him or her to proceed with typing that  
09:48:54 2 prescription until, you know, it gets sent to me and I, you  
09:48:57 3 know, see what is going on with it.

09:49:00 4 Another alert that comes to mind is the fraudulent  
09:49:02 5 prescription alert. Sometimes, you know, a doctor has their  
09:49:07 6 DEA number stolen and people will try to call in fraudulent  
09:49:10 7 prescriptions. So, you know, in those cases, it will kind  
09:49:12 8 of flash like, you know, be wary that this doctor for  
09:49:17 9 controlled substances has had their DEA number stolen, you  
09:49:19 10 know, evaluate them before you fill it.

09:49:21 11 Those are two that come to mind.

09:49:23 12 **Q** And shifting from alerts to blocks, which I think we  
09:49:26 13 touched on, are there -- is there a functioning in Rx  
09:49:30 14 Connect where you can't fill for certain prescribers? I  
09:49:37 15 think you touched on DEA registration numbers and if those  
09:49:40 16 are invalid you can't fill.

09:49:41 17 **A** That is correct.

09:49:41 18 **Q** And is there another circumstance where Rx Connect has  
09:49:44 19 a block related to prescribers?

09:49:46 20 **A** I have also seen it to where it will be -- again, this  
09:49:50 21 is a hard stop. I can't get by it. A message will pop up.  
09:49:56 22 It will say something along the lines of CVS pharmacy has  
09:50:00 23 decided not to fill controlled medications for this  
09:50:03 24 prescriber and, you know, we can't proceed with filling that  
09:50:06 25 medication.



**Cook - Direct/Miller**

09:50:06 1 **Q** And that other block would be based on an internal CVS  
09:50:10 2 decision not to fill for a particular prescriber?

09:50:13 3 **A** To the best my knowledge, yes, I would assume that's  
09:50:18 4 why.

09:50:19 5 **Q** We talked about -- we talked about OARRS and I just  
09:50:21 6 want to circle back to that.

09:50:23 7 Is OARRS another tool that you use in evaluating  
09:50:26 8 prescriptions?

09:50:26 9 **A** Yes.

09:50:27 10 **Q** And is there something called a NarxCare score that  
09:50:35 11 appears in Rx Connect?

09:50:36 12 **A** Yes.

09:50:37 13 **Q** And does that NarxCare score appear right in Rx  
09:50:42 14 Connect itself or do you have to go to another website to  
09:50:44 15 see that score?

09:50:45 16 **A** In the process of filling a controlled medication, it  
09:50:47 17 shows up right on my screen. I couldn't ignore it if I  
09:50:51 18 wanted to.

09:50:51 19 **Q** And what -- how do you use NarxCare as a tool?

09:50:57 20 **A** So, to explain NarxCare, there's three components that  
09:51:01 21 it really brings up. Three -- based on three categories of  
09:51:05 22 controlled medication. There is stimulants, which would be  
09:51:08 23 Adderall, Vyvanse, maybe controlled medications for ADHD.  
09:51:13 24 There's opioids, which I'm sure everybody here is well  
09:51:15 25 versed in now, and then there's also sedatives.

**Cook - Direct/Miller**

09:51:18 1 That would be maybe Zolpidem or Ambien. Typically  
09:51:23 2 medications that people use to -- maybe Ativan as well, to  
09:51:26 3 relax or to fall asleep.

09:51:28 4 That -- those three scores individually show up on my  
09:51:31 5 screen, regardless of the type of controlled medication I'm  
09:51:34 6 filling. It's a score, you know, calculated based on their  
09:51:39 7 prior fill history through OARRS, but more importantly, what  
09:51:43 8 I can use it for is if a patient presents to me with a brand  
09:51:47 9 new pain script for a high dose medication and, you know,  
09:51:50 10 they have no fill history with me, I can see that, okay, you  
09:51:52 11 know, they've been getting it at the past down the street or  
09:51:52 12 vice versa, if a patient presents with a dose pain  
09:51:59 13 medication and I see well, this doesn't make sense, their  
09:52:02 14 risk score, their narc score is 0, something's not right  
09:52:06 15 here.

09:52:06 16 Again, it's just one tool that we use but that  
09:52:08 17 information is right there before I even have to run a full  
09:52:12 18 OARRS report and that risk score shows up.

09:52:15 19 **Q** So it's just another tool in your toolkit?

09:52:18 20 **A** Absolutely.

09:52:18 21 **Q** That you use to evaluate prescriptions?

09:52:20 22 **A** Yes.

09:52:21 23 **Q** Let's talk a little about training.

09:52:23 24 Did CVS train you on the legal requirements for  
09:52:27 25 filling prescriptions?

**Cook - Direct/Miller**

09:52:27 1 **A** Yes, they did.

09:52:28 2 **Q** And how often did CVS provide you with that training?

09:52:33 3 **A** We have to do that training biannually, twice a year.

09:52:36 4 **Q** And there was a general training on the filling of  
09:52:39 5 prescriptions?

09:52:39 6 **A** Oh, yes.

09:52:40 7 So when I first, yes, started with the company and  
09:52:42 8 then again, I believe as a pharmacist, there was just  
09:52:45 9 filling a prescription kind of 101, so to speak, yes.

09:52:51 10 **Q** And also, did CVS provide you with training specific  
09:52:55 11 to the filling of controlled substance prescriptions?

09:52:57 12 **A** Yes. That's what I was referencing. That's the one  
09:53:00 13 that's done twice a year every year.

09:53:01 14 **Q** Do you also discuss corresponding responsibility in  
09:53:04 15 your annual review with your supervisors?

09:53:06 16 **A** Yes, I do.

09:53:07 17 **Q** And can you tell the jury a little bit about that?

09:53:10 18 **A** Yes.

09:53:11 19 So every year during my annual performance review, my  
09:53:16 20 pharmacy supervisor and/or district leader will sit down  
09:53:18 21 with me, not only to formally deliver my review for the  
09:53:26 22 prior year, but also to discuss corresponding  
09:53:27 23 responsibility, to ensure that I'm aware not only to  
09:53:30 24 practice it, but I'm aware of its existence and that, you  
09:53:33 25 know, CVS is not going to punish me for exercising, you

**Cook - Direct/Miller**

09:53:38 1 know, corresponding responsibility in a situation where I'm  
09:53:40 2 uncomfortable filling a prescription.

09:53:42 3 So I sign a copy, give it to my boss to file, and then  
09:53:45 4 a copy is -- I keep a copy and file it.

09:53:49 5 **Q** So it's a reminder that CVS supports you in exercising  
09:53:53 6 your corresponding responsibility?

09:53:54 7 **A** Yes.

09:53:55 8 **Q** But you already know that as a practicing CVS  
09:53:58 9 pharmacist; correct?

09:53:59 10 **A** I do.

09:54:01 11 **Q** All right. Let's move to community programs that  
09:54:09 12 you've participated in or are aware of.

09:54:11 13 **A** Okay.

09:54:12 14 **Q** Are you aware of a program called Pharmacists Teach?

09:54:15 15 **A** Yes.

09:54:16 16 **Q** And can you tell the jury a little bit about  
09:54:19 17 Pharmacists Teach?

09:54:19 18 **A** Yeah.

09:54:20 19 So Pharmacists Teach is a general broad term that CVS  
09:54:24 20 has when they send pharmacists to teach members of the  
09:54:28 21 community about various subjects. My wife and I did one at  
09:54:33 22 a senior citizen home regarding the importance of medication  
09:54:37 23 compliance, for example, as well as the importance of  
09:54:40 24 vaccinations, you know, just staying up to date on your  
09:54:43 25 medical records. So that's one example.

**Cook - Direct/Miller**

09:54:47 1 Another example, you know, more applicable to this  
09:54:50 2 trial, I've partaken in on -- I've probably done over  
09:54:57 3 several days, to the best of my knowledge, about a dozen of  
09:55:00 4 them called One Choice Changes Everything presentations.

09:55:03 5 So what that is is CVS sends its pharmacists into  
09:55:06 6 local schools, specifically high schools, you know, the  
09:55:08 7 teenage population, that statistically is more at risk to  
09:55:14 8 abuse an opioid medication or any medication rather. And we  
09:55:18 9 go to, you know, local schools and teach them the importance  
09:55:24 10 of that one choice, that one choice to not take that pill,  
09:55:30 11 consequently also the one choice to take that pill, just  
09:55:32 12 like the impacts it can have on that individual's life.

09:55:36 13 So I'm very passionate about it. You know, living in  
09:55:39 14 Mentor, I've done it exclusively at Mentor high school. On  
09:55:42 15 my off days, I volunteer to do it because it's something  
09:55:45 16 that's important to me and CVS provided me with all the  
09:55:48 17 resources I needed to make that presentation.

09:55:50 18 **Q** And having made that presentation, I take it to high  
09:55:54 19 schoolers in Mentor?

09:55:54 20 **A** That is correct.

09:55:56 21 **Q** Did you feel being in the room with those students,  
09:56:02 22 that they -- you were able to communicate with them some of  
09:56:06 23 the concerns surrounding prescription opioids?

09:56:09 24 **A** Yeah. I mean, talking to 16-year-olds, they're not  
09:56:13 25 the most mature audience, but if I got through to one or two

**Cook - Direct/Miller**

09:56:17 1 of them, you know, obviously it was a good day.

09:56:20 2 **Q** And did it -- did it feel like you did?

09:56:24 3 **A** It did, absolutely. I had, on one occasion -- and I  
09:56:27 4 won't get into the specifics, but I had a young high  
09:56:30 5 schooler at Mentor high school, a sophomore, approach me  
09:56:33 6 after the program to, you know, discuss a situation that his  
09:56:37 7 friend was going through. So, I mean, that conversation  
09:56:40 8 alone made it all worthwhile.

09:56:45 9 **Q** Now, shifting gears a bit, are you familiar with Drug  
09:56:51 10 Take Back kiosks or Take Back boxes?

09:56:54 11 **A** Yes, I am.

09:56:54 12 **Q** And the jury's heard a little bit about those, but can  
09:56:57 13 you just remind them?

09:56:58 14 **A** Yes.

09:56:59 15 So select CVS's, I've now been at three they had them,  
09:57:04 16 including one at like the first stores in Northeast Ohio to  
09:57:07 17 get it, but it is like an ATM size steel box where patients  
09:57:11 18 can dispose of unused or unwanted, you know, expired  
09:57:16 19 medication, kind of no questions asked.

09:57:17 20 We keep it locked when the pharmacy is closed; unlock  
09:57:21 21 it during operational hours and, you know, you just drop it  
09:57:24 22 in and go on your go on your day.

09:57:27 23 But it allows patients to -- you know, whether there's  
09:57:29 24 a death in the family or just they're cleaning out their  
09:57:32 25 medicine cabinet, they can just drop them off and they get

**Cook - Direct/Miller**

09:57:35 1 destroyed.

09:57:36 2 **Q** And did you find that the members of your community  
09:57:39 3 were making use of those disposal units?

09:57:42 4 **A** Yes.

09:57:43 5 When I first started, obviously, it took a while for  
09:57:46 6 people to recognize what it was. You know, we had to check  
09:57:50 7 the volume once weekly, but near the end, we were sending  
09:57:53 8 back boxes at a pretty frequent pace.

09:57:55 9 **Q** And what was your role in connection with the Drug  
09:57:59 10 Take Back boxes? What did you do?

09:58:01 11 **A** So I -- as the pharmacy manager, I supervised that  
09:58:04 12 program. I was the one responsible for checking the volume,  
09:58:07 13 as I just mentioned.

09:58:09 14 When it was full, I would close the kiosk, you know,  
09:58:12 15 seal up the box and send it on its way. And then the once  
09:58:15 16 the box had been taken, I would set up the new liner, the  
09:58:18 17 new box and reopen it for the public use.

09:58:20 18 **Q** And just to make sure the jury understands, those  
09:58:24 19 boxes, there's -- they're very secure; correct?

09:58:27 20 **A** Yeah. It's in a -- it's got -- in addition to the  
09:58:31 21 locking drawer mechanism to drop the medication, it's got  
09:58:36 22 two padlocks that lock the medication. Each padlock has a  
09:58:40 23 different key. So it actually takes some time to get in  
09:58:44 24 there, a lot of frustration. But yes, they're -- I would  
09:58:47 25 say they're secure.

**Cook - Direct/Miller**

09:58:48 1 **Q** All right, Mr. Cook. A few final questions for you.

09:58:54 2 Do you understand the risks associated with  
09:58:58 3 prescription opioid medications?

09:59:00 4 **A** I do understand those risks.

09:59:02 5 **Q** And did you exercise corresponding responsibility on  
09:59:07 6 every controlled substance prescription?

09:59:09 7 **A** I did.

09:59:11 8 **Q** Did CVS support you in exercising your corresponding  
09:59:14 9 responsibility?

09:59:15 10 **A** Yes.

09:59:17 11 **Q** Did CVS indicate to you that it expected you to  
09:59:22 12 exercise corresponding responsibility?

09:59:23 13 **A** Yes.

09:59:26 14 **Q** Did CVS indicate to you that it expected you to refuse  
09:59:30 15 to fill prescriptions that you believed might be  
09:59:37 16 illegitimate?

09:59:37 17 **A** Yes.

09:59:38 18 **Q** Did CVS indicate to you that this was required?

09:59:40 19 **A** Yes. Yeah.

09:59:41 20 **Q** Did CVS provide you with the tools and information you  
09:59:44 21 needed to exercise corresponding responsibility?

09:59:48 22 **A** Yes.

09:59:49 23 **Q** Did CVS ever pressure you to fill more opioid  
09:59:54 24 prescriptions?

09:59:55 25 **A** Absolutely not.



**Cook - Direct/Miller**

09:59:56 1 **Q** Did CVS ever suggest to you that there was a limit on  
10:00:01 2 how many controlled substance prescriptions you could refuse  
10:00:03 3 to fill?

10:00:04 4 **A** Absolutely not.

10:00:07 5 **Q** How many years have you lived in Lake County?

10:00:11 6 **A** The better part of 25 years, to the best of my  
10:00:15 7 knowledge.

10:00:15 8 **Q** And how many years have you practiced as a pharmacist  
10:00:18 9 in Lake County?

10:00:19 10 **A** Nine years.

10:00:21 11 **Q** Is that the majority of your career?

10:00:22 12 **A** Yes.

10:00:25 13 **Q** And over the span of your career as a CVS pharmacist,  
10:00:30 14 who are the patients that you have served?

10:00:32 15 **A** My neighbors, my friends, people I see at church, my  
10:00:36 16 community.

10:00:39 17 **Q** Mr. Cook, do you believe you have done anything to  
10:00:42 18 harm the people of Lake County?

10:00:45 19 **A** Absolutely not.

10:00:46 20 The people I fill medications for are, like I said,  
10:00:49 21 people I see at the grocery store, people I see when I'm out  
10:00:52 22 and about with my kids. I've -- no.

10:00:56 23 **Q** Do you believe the pharmacies you've worked at have  
10:00:59 24 done anything to harm the public in Lake County?

10:01:03 25 **A** No.

**Cook - Cross/Lanier**

10:01:05 1 MS. MILLER: Thank you, Mr. Cook. That's all  
10:01:08 2 I have.

10:01:08 3 THE WITNESS: Thank you.

10:01:11 4 THE COURT: Anything from any of the other  
10:01:14 5 defendants?

10:01:14 6 MR. STOFFELMAYR: No. Thank you, Your Honor.

10:01:16 7 MR. MAJORAS: No. Thank you, Your Honor.

10:01:16 8 CROSS-EXAMINATION OF KENNETH COOK

10:01:36 9 BY MR. LANIER

10:01:36 10 **Q** Mr. Cook, my name is Mark Lanier.

10:01:39 11 I've not had the pleasure of meeting you before, but  
10:01:41 12 it sounds to me like you've been a great pharmacist who has  
10:01:44 13 done a lot of good work for the community and tried to help  
10:01:46 14 make this world a better place. And I want to say thank  
10:01:50 15 you.

10:01:50 16 **A** I appreciate it, sir. Thank you.

10:01:51 17 **Q** I've got a few questions, though, I need to ask you,  
10:01:55 18 as I'm sure you've been warned.

10:01:57 19 **A** I understand. Yes. Yes.

10:01:58 20 **Q** All right.

10:01:59 21 As is typical for me at least, I give you a roadmap so  
10:02:02 22 you got a clue of what I'm going to say and so the jury  
10:02:05 23 does, and it's just a way to keep pace with what we're  
10:02:09 24 doing. Okay?

10:02:10 25 **A** Yes, sir.

**Cook - Cross/Lanier**

10:02:11 1 **Q** Is that you? Did I get you okay?

10:02:12 2 **A** Yes. That's my LinkedIn photo. I recognize it. Good  
10:02:16 3 looking guy.

10:02:16 4 **Q** Yeah. Yeah.

10:02:17 5 So I want to talk to you about some basics, I want to  
10:02:19 6 talk to you about some stores issues, I want to talk to you  
10:02:22 7 about some limitations. I think we can do this in  
10:02:24 8 15 minutes. Okay?

10:02:25 9 **A** Yes, sir. I'm remember.

10:02:26 10 **Q** All right.

10:02:27 11 First of all, let's start with the basics. These are  
10:02:29 12 things I think you and I agree with each other on but I just  
10:02:32 13 want to make sure we do. I've got them up here. We'll go  
10:02:35 14 one at a time.

10:02:36 15 Would you agree with me there are good pharmacists and  
10:02:39 16 not-so-good pharmacists? There's a wide range. Fair?

10:02:42 17 **A** I would disagree with that, sir.

10:02:45 18 **Q** You would disagree with that? So --

10:02:48 19 **A** Oh, go ahead.

10:02:49 20 **Q** You don't think that there are pharmacists who's lost  
10:02:53 21 their license, for example?

10:02:54 22 **A** Well, sir, I can speak to, you know, my time at five  
10:02:58 23 different CVS's in Lake County, specifically. I've probably  
10:03:01 24 had about a dozen or so staff pharmacists and pharmacists  
10:03:04 25 who reported to me in my role as pharmacy manager. At no

**Cook - Cross/Lanier**

10:03:09 1 point in time was I made aware or was I uncomfortable with  
10:03:12 2 their dispensing of controlled medications or opioid  
10:03:14 3 medications.

10:03:15 4 None of them lost their license. None of them were  
10:03:17 5 disciplined, and those are the pharmacists that I can speak  
10:03:20 6 to.

10:03:20 7 **Q** Okay. And that's fair.

10:03:21 8 So you're speaking based upon the pharmacists you  
10:03:24 9 know. You're not saying blanket, there are no bad  
10:03:28 10 pharmacists in the world. Fair?

10:03:29 11 **A** Yes. I can only speak to what I know, sir. Yes, sir.

10:03:32 12 **Q** And if you look at the ones you know. You know, for  
10:03:34 13 example, there was a time when you needed to coach one of  
10:03:36 14 the pharmacists in terms of narcotic wait times; right?

10:03:39 15 **A** That was more on the -- yes. Yeah. There was that  
10:03:43 16 one instance, yes.

10:03:44 17 **Q** Yeah. I mean, enough to where it made your annual  
10:03:47 18 review, that you had to note in there that you had to coach  
10:03:49 19 your partner with wait times for narcotics; right?

10:03:52 20 **A** She, more or less, was just not wanting to deal with  
10:03:56 21 the prescriptions, which is unfair because these patients  
10:03:58 22 that do have a valid prescription for an opioid medication,  
10:04:01 23 I mean, they're obviously in a high degree of pain. So it  
10:04:06 24 was more so ensuring that, you know these patients are able  
10:04:08 25 to get their medications in a timely manner.

**Cook - Cross/Lanier**

10:04:10 1 That was my issue, not with her dispensing or filling  
10:04:13 2 or anything like that.

10:04:15 3 **Q** I'm going to pass up to you or ask Ms. Fleming to pass  
10:04:19 4 up to you Plaintiff's Exhibit 21927, which is a section of  
10:04:24 5 your year-end reviews.

10:04:27 6 **A** Yes, I have it here.

10:04:28 7 **Q** And if you look at what you had to say about your  
10:04:31 8 colleague comments on Page 12, your comments were a little  
10:04:36 9 bit different than the way you're saying it now, at least.  
10:04:39 10 This is colleague comments. This is your statement;  
10:04:42 11 correct?

10:04:42 12 **A** That is correct, yes, sir.

10:04:44 13 **Q** "At times, I had to really coach my partner who would  
10:04:48 14 have real challenges with the blue chips, like flu shots and  
10:04:53 15 wait times for narcotics specifically, but I was able to  
10:04:57 16 hold the team together throughout all this and make sure we  
10:05:00 17 did not go off track from the CVS mission statement."

10:05:03 18 Do you see that?

10:05:03 19 **A** Yes.

10:05:05 20 MS. MILLER: Mark, I apologize for  
10:05:06 21 interrupting. I'm not sure. Can you give us the Bates  
10:05:11 22 label on the page you're referring to?

10:05:13 23 MR. LANIER: Yeah. The Bates label is 559,  
10:05:16 24 but it is Plaintiffs' Exhibit 21927, Page 12.

10:05:21 25 MS. MILLER: Oh, I'm sorry, we -- it looks

**Cook - Cross/Lanier**

10:05:23 1 like we got two different exhibits.

10:05:26 2 THE WITNESS: Yeah, I don't have 559.

10:05:28 3 MS. MILLER: We don't have 559.

10:05:36 4 MR. LANIER: Okay. We'll get you a copy.

10:05:38 5 BY MR. LANIER:

10:05:38 6 **Q** Suffice it to say, do you remember -- I'll keep it up  
10:05:41 7 on the screen so you can see it. Do you remember this?

10:05:44 8 **A** Vaguely, with all honesty. I mean it was a long time  
10:05:48 9 ago.

10:05:49 10 MS. MILLER: Mark, I apologize for  
10:05:50 11 interrupting again. But, do you have a hard copy for Mr.  
10:05:53 12 Cook? We're trying to pull it up.

10:05:56 13 MR. LANIER: Yeah. I'll hand you one.

10:05:56 14 BY MR. LANIER:

10:05:59 15 **Q** You remember this, sir?

10:06:00 16 **A** Yeah.

10:06:03 17 MR. LANIER: Here you go.

10:06:04 18 MS. MILLER: Thank you so much.

10:06:05 19 MR. LANIER: You bet.

10:06:05 20 BY MR. LANIER:

10:06:06 21 **Q** And all I'm driving at is, you know, there are -- you  
10:06:11 22 will not agree with this. Let's just make that note. Don't  
10:06:13 23 agree. We'll come back to it with some more questions here  
10:06:16 24 in a bit.

10:06:18 25 Would you at least agree with me that pharmacists rely

**Cook - Cross/Lanier**

10:06:21 1 on the companies for their policies and equipment and  
10:06:30 2 recurrent training?

10:06:31 3 **A** I mean, policies are specific to the company, I guess,  
10:06:33 4 but training, I mean, I've gone through numerous continuing  
10:06:38 5 education courses outside of CVS. I don't rely on CVS for,  
10:06:41 6 you know, training in that sense.

10:06:44 7 **Q** Has CVS paid for those?

10:06:46 8 **A** I've asked to be reimbursed for them and I've had no  
10:06:50 9 problem getting reimbursed. There's other ones that, you  
10:06:52 10 know, my wife and I wanted to kind of just get away for a  
10:06:55 11 weekend, do some continuing ed. I, of course, never asked  
10:06:58 12 for reimbursement for those, but...

10:07:00 13 **Q** How about if we put some recurrent training? Would  
10:07:04 14 that be fair?

10:07:05 15 **A** I would say that would be fair, some recurrent  
10:07:08 16 training, yes.

10:07:09 17 **Q** And would you agree with me that opioids are highly  
10:07:11 18 addictive?

10:07:12 19 **A** Absolutely, I would.

10:07:13 20 **Q** And would you agree with me that the Lake County, at  
10:07:16 21 least, has experienced opioid issues, problems, in the  
10:07:21 22 community?

10:07:21 23 **A** I mean, I can speak to my knowledge as a Lake County  
10:07:25 24 resident for the better part of a quarter century. I  
10:07:29 25 personally have been blessed, sir, you know, not to have any

**Cook - Cross/Lanier**

10:07:32 1 friends, families, neighbors, you know, colleagues that have  
10:07:36 2 been affected by the opioid epidemic, but I understand that  
10:07:39 3 there's families out there, you know, who have been  
10:07:42 4 affected. And I don't mean to make light of that, sir, but  
10:07:45 5 like I say, from my experience, I have not seen it in the  
10:07:49 6 county. No, sir.

10:07:52 7 **Q** Wow.

10:07:53 8 One Choice Changes Everything. That's the name of the  
10:07:56 9 speech you give at the high school?

10:07:57 10 **A** Yes. Yes, sir.

10:07:58 11 **Q** Do you believe that?

10:08:00 12 **A** You know, in that context, I absolutely do, sir,  
10:08:03 13 especially with a very young population that can be  
10:08:06 14 susceptible to making dumb decisions, as we all did when we  
10:08:09 15 were that age.

10:08:10 16 **Q** Would you agree then that one bad prescription filled  
10:08:13 17 can have ripple effects in one's life?

10:08:15 18 MS. MILLER: Objection.

10:08:16 19 THE COURT: Overruled.

10:08:19 20 THE WITNESS: One bad prescription filled can  
10:08:21 21 have a ripple effect. I mean, I -- I don't understand the  
10:08:25 22 question.

10:08:25 23 I mean, the One Choice presentation, YOUR prior point  
10:08:30 24 spoke primarily to, you know, teenagers who maybe got an  
10:08:33 25 opioid prescription from the medicine cabinet that was



**Cook - Cross/Lanier**

10:08:37 1 lawfully prescribed, lawfully issued for a valid medical  
10:08:40 2 reason, not necessarily a 13-year-old getting a prescription  
10:08:42 3 for Percocet.

10:08:44 4 So I don't know the specifics with that question.

10:08:47 5 BY MR. LANIER:

10:08:47 6 **Q** All I'm driving at is if one choice can change  
10:08:51 7 everything, then a bad prescription that's out there that  
10:08:56 8 shouldn't be out there, that might lead to a choice, that  
10:08:59 9 could change everything too. Fair?

10:09:01 10 **A** Well, but a good prescription can also have ripple  
10:09:04 11 effects in one's life, too. I mean --

10:09:06 12 **Q** No question. And a good choice can change things as  
10:09:10 13 well; right?

10:09:10 14 **A** A good choice does change things.

10:09:12 15 **Q** But that didn't stop you from explaining to the high  
10:09:16 16 school students that a bad choice can change everything;  
10:09:19 17 right?

10:09:19 18 **A** Correct.

10:09:19 19 **Q** And the same is true from the position of a  
10:09:21 20 pharmacist. A bad choice on dispensing can change things as  
10:09:25 21 well, can't it?

10:09:25 22 **A** I'm not sure I --

10:09:27 23 MS. MILLER: Objection.

10:09:27 24 THE COURT: Overruled.

10:09:28 25 THE WITNESS: I'm not sure I can speak to

**Cook - Cross/Lanier**

10:09:30 1 that. I'm confident when -- sir, when my name gets on the  
10:09:34 2 bottle when I dispense a medication of any kind to my  
10:09:37 3 patients, so I can't speak to the dispensing of like a bad  
10:09:41 4 medication, so to speak.

10:09:42 5 BY MR. LANIER:

10:09:43 6 **Q** All right. Well then let's move down the road to the  
10:09:45 7 store issues for a moment. Okay?

10:09:46 8 **A** Yes, sir.

10:09:47 9 **Q** You've worked in a lot of stores, haven't you?

10:09:48 10 **A** Yes, sir.

10:09:49 11 **Q** And one of the stores that you worked at was in  
10:09:53 12 Mentor; correct?

10:09:55 13 **A** Two of them technically, sir, yes.

10:09:56 14 **Q** But you worked at 3326. True?

10:09:59 15 **A** Yes, sir. Both as an intern and as a pharmacist.

10:10:02 16 **Q** All right.

10:10:09 17 I'm going to hand you a document. I will hand you  
10:10:13 18 Plaintiffs' Exhibit 21936. It is a report from your store  
10:10:20 19 about theft or potentially significant loss dating back to  
10:10:25 20 2014, Store 3326, dealing with an initial notification of  
10:10:35 21 controlled substance theft or potentially significant loss.

10:10:38 22 Do you see that?

10:10:40 23 **A** Yes, sir.

10:10:40 24 To clarify what you just said, though, it was -- I  
10:10:43 25 mean, I filled out this paperwork as I started at the store.

**Cook - Cross/Lanier**

10:10:46 1 It wasn't my store, per se, like at the time of the loss.

10:10:49 2 **Q** Not a problem.

10:10:50 3 **A** Just to clarify.

10:10:51 4 **Q** And if we look at it, upon taking over the CVS Store  
10:10:57 5 33267, pharmacy manager Dan Blore started a narcotic  
10:11:04 6 inventory of Schedule II medications for a change in  
10:11:08 7 pharmacists in charge.

10:11:09 8 Do you see that?

10:11:10 9 **A** Yes, sir.

10:11:11 10 **Q** It was discovered many of the logbooks were off, both  
10:11:15 11 positive and negative, for multiple medications.

10:11:19 12 Is that a good or bad thing?

10:11:22 13 **A** Based on what we experienced, sir, it was definitely a  
10:11:27 14 headache.

10:11:27 15 **Q** Definitely what?

10:11:27 16 **A** I said it was definitely a headache for us when we  
10:11:30 17 first started there.

10:11:31 18 **Q** No, not a headache. I was asking is that a good thing  
10:11:35 19 or a bad thing when we were talking about good pharmacists'  
10:11:37 20 practices and bad pharmacists' practices, is it a good or a  
10:11:41 21 bad thing if the logbooks are off for multiple medications?

10:11:44 22 **A** Well, I think what we can agree on -- what we can  
10:11:47 23 agree on, this is a bad thing when it comes to  
10:11:50 24 recordkeeping, but this doesn't necessarily correlate to  
10:11:53 25 corresponding responsibility and the practice of pharmacy by

**Cook - Cross/Lanier**

10:11:56 1 those particular pharmacists.

10:11:57 2 **Q** Some narcotics were also not logged at all when  
10:12:01 3 ordered.

10:12:01 4 Is that a good thing or bad thing?

10:12:03 5 **A** In terms of recordkeeping, that is not a good thing,  
10:12:05 6 no.

10:12:05 7 **Q** Well, recordkeeping isn't simply something to do for  
10:12:09 8 grins; you're taught back in school recordkeeping is  
10:12:12 9 extremely important; correct?

10:12:14 10 **A** We are taught the importance of recordkeeping, yes.

10:12:16 11 **Q** And you're not only taught the importance of  
10:12:18 12 recordkeeping, but you know, under the law, there are  
10:12:21 13 certain records that have to be kept; right?

10:12:24 14 **A** That is correct. That's why the second we took over  
10:12:26 15 the store we -- this is the first thing we did.

10:12:29 16 **Q** Multiple NDCs, what's an NDC?

10:12:33 17 **A** NDC is a National Drug Code. It's specific to a  
10:12:38 18 manufacturer and the drug name. It's an 11-digit, you know,  
10:12:43 19 sequence. I won't get into the specifics of it. I'll bore  
10:12:46 20 you. But essentially what that's saying is perhaps a  
10:12:50 21 medication for, you know, like Cook Pharmaceuticals was  
10:12:53 22 documented under Lanier Pharmaceuticals, if that makes sense  
10:12:58 23 to you.

10:12:58 24 **Q** Sure.

10:12:58 25 So multiple NDCs were logged under one NDC, which

**Cook - Cross/Lanier**

10:13:03 1 further led to discrepancies in the logbook.

10:13:06 2 Good thing or a bad thing?

10:13:07 3 **A** Again, from a recordkeeping point of view, it's not a  
10:13:10 4 good thing but doesn't necessarily correlate to  
10:13:13 5 prescriptions being filled without corresponding  
10:13:15 6 responsibility.

10:13:15 7 **Q** Well, but let's see what it might correlate to if we  
10:13:21 8 look at Plaintiffs' Exhibit 21937.

10:13:31 9 Do you have 21- you don't yet. I'm sorry,  
10:13:34 10 Ms. Fleming?

10:13:34 11 **A** I have it, yes, sir.

10:13:35 12 **Q** You got it?

10:13:36 13 **A** Yes, sir.

10:13:36 14 **Q** And this is a form that you submitted as a pharmacist  
10:13:42 15 June 9th of 2014. True?

10:13:45 16 **A** I see that, yes, sir.

10:13:48 17 **Q** And it deals with this same store, 3326; correct?

10:13:52 18 **A** Yes, sir.

10:13:54 19 **Q** And it's got the details of the theft or loss that we  
10:13:58 20 were looking at before. True?

10:14:02 21 MS. MILLER: Objection.

10:14:03 22 THE COURT: Overruled.

10:14:06 23 THE WITNESS: Yes. It does list the details.

10:14:08 24 Yes, sir.

10:14:08 25 BY MR. LANIER:

**Cook - Cross/Lanier**

10:14:09 1 **Q** And it says, "Enter the name and strength of the  
10:14:14 2 controlled substance lost or stolen for the medication with  
10:14:16 3 the largest quantity estimated to be lost at this time."  
10:14:19 4 Do you see that?  
10:14:19 5 **A** Yes, sir, I do read that.  
10:14:20 6 **Q** And the answer is it's oxycodone; correct?  
10:14:27 7 **A** Yes, sir.  
10:14:29 8 **Q** And then it says, "Estimate the number of units," so  
10:14:32 9 the quantity lost for the medication named in the field  
10:14:37 10 above. And it shows 220 pills lost; is that right?  
10:14:42 11 **A** Well, two things, sir.  
10:14:44 12 Number one, as you highlighted it twice on your  
10:14:46 13 screen, it is estimation. Number two, we reported this as  
10:14:52 14 soon as both Dan and I, we were kind of co-managing at the  
10:14:57 15 time, just to clarify here. The second we realized there  
10:15:00 16 was a discrepancy, we reported it.  
10:15:02 17 We voluntarily invited in the DEA, Lake County  
10:15:05 18 Narcotics, and the Board of Pharmacy to assist us with our  
10:15:08 19 investigation. So yes, at the time our best estimate was it  
10:15:10 20 was 220 Percocet. I don't recall what it ended up being on  
10:15:15 21 the back end, but we just wanted to get this paperwork going  
10:15:17 22 and get the correct investigative, you know, regulatory  
10:15:21 23 agencies in there as quickly as possible.  
10:15:23 24 **Q** So is this a good thing or a bad thing?  
10:15:27 25 **A** Again, it speaks to bad recordkeeping. That doesn't

**Cook - Cross/Lanier**

10:15:30 1 necessarily mean that, you know, these 220 tablets were, you  
10:15:34 2 know, on the street for illicit purposes. What it means is  
10:15:39 3 the pharmacist or pharmacists at the time were not up to  
10:15:41 4 date with recordkeeping.

10:15:42 5 **Q** Is that a good thing or a bad thing?

10:15:44 6 **A** Well, as I stated before, yeah, the recordkeeping, not  
10:15:46 7 a good thing.

10:15:47 8 **Q** Well, not only recordkeeping, you don't know whether  
10:15:50 9 these are stolen or whether they're lost, whether they were  
10:15:55 10 over-dispensed, whether somebody put too many in, whether  
10:16:00 11 somebody took some out.

10:16:01 12 You don't have a clue, do you?

10:16:02 13 **A** Well, no, sir, and that's why at the time, both Dan  
10:16:05 14 and I obviously were freaking out a little bit, for lack of  
10:16:08 15 a better word. And we called the DEA, we called Lake County  
10:16:12 16 Narcotics, we called the Board of Pharmacy, and we had a  
10:16:14 17 heck of a visit to figure out.

10:16:18 18 No -- to my knowledge, sir, no illicit dispensing, no  
10:16:23 19 theft, no anything that you just referenced was discovered.

10:16:27 20 **Q** Nobody knows. They just disappeared?

10:16:31 21 **A** Well -- and at the time, that's how many we thought we  
10:16:33 22 lost. I can't speak into how many ended up, you know, being  
10:16:37 23 found on the back end. But, again, that's why we freely  
10:16:40 24 invited in those regulatory bodies to help work with them to  
10:16:43 25 figure out the solution.

**Cook - Cross/Lanier**

10:16:44 1 **Q** When I asked if there are good pharmacists and  
10:16:47 2 not-so-good pharmacists, would you agree with me that a good  
10:16:50 3 pharmacist is going to do a good job of keeping up records,  
10:16:54 4 especially on narcotics? True?

10:16:59 5 **A** I would say, yeah, a good pharmacist would have better  
10:17:02 6 recordkeeping purposes. But when you asked the question, I  
10:17:04 7 was looking at it in terms of corresponding responsibility as  
10:17:07 8 it pertains to this.

10:17:09 9 **Q** And if we look beyond that, the question was also  
10:17:13 10 asked, "Enter the name and strength of the controlled  
10:17:17 11 substance lost or stolen for the medication with the second  
10:17:21 12 largest quantity."

10:17:23 13 Do you see that as well?

10:17:25 14 **A** I do, yes, sir.

10:17:25 15 **Q** And here, we've got another set of oxy tablets, don't  
10:17:35 16 we?

10:17:35 17 **A** Yes, I do see that.

10:17:36 18 **Q** And this, the estimate was 101 that were lost or  
10:17:40 19 stolen.

10:17:40 20 True?

10:17:40 21 **A** Well, at the time, it was an estimation. And in order  
10:17:42 22 to get the DEA into our pharmacies to help us with our  
10:17:45 23 investigation, we had to fill out this report. So we filled  
10:17:48 24 it out as best we could at the time.

10:17:50 25 I can't speak to what the final, you know, quantity



**Cook - Cross/Lanier**

10:17:53 1 ended up being.

10:17:55 2 **Q** And I understand it says estimate.

10:17:58 3 **A** Yes, sir.

10:17:58 4 **Q** But it doesn't say 100. It says 101.

10:18:02 5 **A** Yeah.

10:18:02 6 **Q** It's a pretty serious estimate. Fair?

10:18:04 7 **A** That's a pretty accurate estimation.

10:18:07 8 **Q** Yeah.

10:18:07 9 And so all I'm driving at is we've got two different  
10:18:11 10 sets of oxy. We're at 321 tablets so far that are, quote,  
10:18:16 11 lost or stolen; correct?

10:18:21 12 **A** Yeah, that's the estimation on how much that was  
10:18:24 13 potentially missing at the time.

10:18:28 14 **Q** Well, what do you mean potentially missing. This says  
10:18:31 15 provide details, not of potential theft or loss, it says  
10:18:34 16 provide details of theft or loss.

10:18:36 17 Do you see that?

10:18:36 18 **A** Yes.

10:18:37 19 Well, again, we wanted this submitted right away just  
10:18:40 20 to get the DEA, you know, boots on the ground in the store  
10:18:43 21 with the Board of Pharmacy, with Lake County Narcotics so we  
10:18:46 22 could work with them on the investigation just in case there  
10:18:51 23 was something, you know, going on.

10:18:52 24 To my knowledge, you know, nothing was ever discovered  
10:18:55 25 with it and we were told at the time, you know, just to --

**Cook - Cross/Lanier**

10:18:58 1 **Q** We're not allowed to get into what you were told.

10:19:01 2 **A** Okay.

10:19:02 3 **Q** That's hearsay. So I don't want to elicit that.

10:19:05 4 **A** Okay.

10:19:05 5 **Q** So and then the third largest medication looks like  
10:19:08 6 Vyvanse. That's like an ADHD. That's kind of an  
10:19:11 7 amphetamine; right?

10:19:12 8 **A** Yes, sir.

10:19:12 9 **Q** It's also a controlled substance, isn't it?

10:19:14 10 **A** Yes, sir.

10:19:15 11 **Q** So you're missing 90 tablets of that.

10:19:17 12 Now, when we talk about this, you said, quote, you  
10:19:21 13 were kind of freaking out, closed quote.

10:19:25 14 This is a -- this is not a cool deal, is it?

10:19:28 15 **A** Well, no, sir.

10:19:30 16 **Q** And, in fact, it's a serious problem from a number of  
10:19:34 17 different perspectives, you might have these pills being  
10:19:40 18 stolen; right?

10:19:40 19 **A** There was never even evidence to support theft.

10:19:43 20 **Q** Never any evidence it wasn't theft, was there?

10:19:46 21 **A** To my knowledge, I can't speak to that, no.

10:19:48 22 **Q** No.

10:19:49 23 And it might be something that was just lost,  
10:19:54 24 miscounted, and not paid for, or something like that; right?

10:19:57 25 **A** I can't speak to, yeah, what happened.

**Cook - Cross/Lanier**

10:20:00 1 **Q** All you can speak to is that at that store, a bunch of  
10:20:04 2 it disappeared; right?

10:20:06 3 **A** I can speak to, yeah, at the time we took over, there  
10:20:09 4 was, yes, those counts were unaccounted for at that time.

10:20:12 5 **Q** And that's not the only time you've experienced things  
10:20:15 6 like that at your stores.

10:20:17 7 True?

10:20:17 8 **A** With regarding a loss of a controlled substance, no, I  
10:20:21 9 filed this report before.

10:20:23 10 **Q** And you filed it afterwards?

10:20:25 11 **A** After -- after might be more accurate, yes, sir.

10:20:27 12 **Q** Yeah. I'm handing you Plaintiffs' Exhibit 20 -- well,  
10:20:30 13 Ms. Fleming is handing you Plaintiffs' Exhibit 21938.

10:20:33 14 Here we've got in 2017, another entry from one of your  
10:20:38 15 stores during the drug -- under drug loss.

10:20:41 16 Do you see that?

10:20:41 17 **A** I do.

10:20:42 18 **Q** And this is another one where you submitted it. And  
10:20:45 19 this time it's Percocet y'all have lost, another opiate;  
10:20:49 20 right?

10:20:50 21 **A** Correct.

10:20:50 22 **Q** In fact, if we look on the back, you've got two  
10:20:52 23 different kinds, you lost 33 units of one, and then 60 units  
10:20:58 24 of the other; correct?

10:20:59 25 **A** That is correct.

**Cook - Cross/Lanier**

10:21:00 1 Q And you're saying maybe this was just dispensing  
10:21:04 2 errors or patients got too much; right?

10:21:09 3 A I see that, yes, sir.

10:21:11 4 Q Now, pharmacists aren't supposed to be handing out too  
10:21:14 5 many opiates, are they?

10:21:16 6 A No, sir.

10:21:16 7 Q And so when we talked about whether or not there were  
10:21:19 8 good pharmacists and not-so-good pharmacists, wouldn't you  
10:21:22 9 agree realistically that there have been times where there  
10:21:26 10 have been some issues in your stores?

10:21:30 11 A Issues as in?

10:21:31 12 Q Yeah.

10:21:32 13 Issues with proper dispensing and inventorying of  
10:21:37 14 opiates.

10:21:38 15 A I can -- I can agree with you that I have obviously  
10:21:40 16 seen issues with the inventory of opioids, yes.  
10:21:44 17 100 percent.

10:21:44 18 Q All right.

10:21:45 19 Before we leave this stop on store issues, I want to  
10:21:50 20 talk to you just a moment about staffing.

10:21:53 21 A Yes, sir.

10:21:53 22 Q Y'all have floaters that have to move from one store  
10:21:56 23 to another; right?

10:21:57 24 A Yes, sir. That's how I started my career and what my  
10:22:01 25 wife currently does for the company.

**Cook - Cross/Lanier**

10:22:03 1 **Q** I understand Store 5941, you know which store that is?

10:22:06 2 **A** Yes, sir.

10:22:07 3 **Q** I understand right now that the pharmacy has even been  
10:22:10 4 closed a good bit in that store with instructions for people  
10:22:13 5 to go to Lake Shore Boulevard because of staffing issues;  
10:22:17 6 right?

10:22:18 7 **A** I'm personally not aware of that, no.

10:22:21 8 **Q** You are unaware of that?

10:22:23 9 THE COURT: Was there an objection?

10:22:27 10 I guess not. Go ahead. You may answer.

10:22:30 11 BY MR. LANIER:

10:22:30 12 **Q** Are you unaware of that?

10:22:31 13 **A** I am unaware of that, correct.

10:22:33 14 **Q** All right.

10:22:34 15 So if I represent to you that we crept on that store  
10:22:36 16 yesterday and we went out to look at it just to get an idea,  
10:22:39 17 and that that sign was up, that would be new to you?

10:22:42 18 **A** That would be new to me, yes, sir.

10:22:44 19 **Q** Okay. You know the doctors well?

10:22:48 20 **A** Generally speaking, yes.

10:22:49 21 **Q** So you know about Dr. Veres?

10:22:52 22 **A** Not that particular prescriber, no, sir.

10:22:55 23 **Q** Do you know about Dr. Torres?

10:22:57 24 **A** Not that prescriber, no, sir.

10:22:59 25 **Q** Do you know about Dr. Escobar?

**Cook - Cross/Lanier**

10:23:02 1 **A** No, sir.

10:23:02 2 **Q** Do you know about Dr. Lazzarini?

10:23:06 3 **A** Are these Lake County doctors?

10:23:08 4 **Q** They're Lake and Trumbull?

10:23:10 5 **A** Okay.

10:23:11 6 **Q** They've had prescriptions filled both places.

10:23:13 7 **A** Okay. I am not familiar with that doctor, yes.

10:23:15 8 **Q** Dr. Demangone?

10:23:17 9 **A** Yes, I am familiar with that doctor.

10:23:18 10 **Q** And you know about the issues with his opiates;  
10:23:21 11 correct?

10:23:21 12 **A** Yes, I'm aware of.

10:23:23 13 **Q** And are you aware of whether or not you filled any of  
10:23:25 14 his prescriptions?

10:23:26 15 **A** I can speak to the fact that earlier on in my career  
10:23:29 16 working in Lake County, I did. At some point, to the best  
10:23:33 17 of my knowledge in 2014, maybe early '15, I stopped, to the  
10:23:38 18 best of my knowledge.

10:23:39 19 **Q** Let's go to the last stop on the road. That's  
10:23:43 20 limitations. And I want to ask you about some limitations.  
10:23:47 21 And I've got some questions up here. We'll go at them one  
10:23:50 22 at a time.

10:23:50 23 Were you a pharmacist during what has been described  
10:23:52 24 to the jury as Phase 1 of the opioid epidemic, from the late  
10:23:59 25 '90s into 2009?

**Cook - Cross/Lanier**

10:24:00 1 **A** No, sir. I started as an intern in 2008, but I still  
10:24:05 2 had, you know, my -- as I referenced in that story earlier,  
10:24:08 3 you know, still was, you know, helping the pharmacy team  
10:24:11 4 with, you know, opioid -- fraudulent opioid prescriptions.

10:24:14 5 **Q** Well, were you a pharmacist with the responsibilities  
10:24:18 6 of a pharmacist during Phase 2 if we define that as 2010 to  
10:24:24 7 2012?

10:24:25 8 **A** I became a licensed pharmacist in PA, best of my  
10:24:29 9 knowledge, sir, probably around September of '12, so -- or  
10:24:33 10 maybe August, something like that, but yeah, for the last  
10:24:35 11 couple months of the year.

10:24:37 12 **Q** Great.

10:24:38 13 And then would you agree with me that the tools that  
10:24:42 14 CVS gives you today help prevent diversion, tools like  
10:24:47 15 NarxCare, for example?

10:24:49 16 Would you agree?

10:24:50 17 **A** I think they help us identify, I mean, not just  
10:24:53 18 diversion, but also, yes, if a -- there's issues. Yes.  
10:24:57 19 Yes, I'll agree.

10:24:58 20 **Q** Would you agree with me that Rx Connect has modified  
10:25:01 21 over the years or decades since it first came out?

10:25:04 22 **A** Yes.

10:25:08 23 **Q** And when you were speaking about it, you're speaking  
10:25:10 24 about it in today's incarnation. Fair?

10:25:14 25 **A** That is a fair assessment.

**Cook - Cross/Lanier**

10:25:15 1 **Q** Now, in your legal training, did they cover the *East*  
10:25:20 2 *Main* case with you?

10:25:20 3 **A** Not to my knowledge, no, sir, that does not ring a  
10:25:24 4 bell.

10:25:24 5 **Q** Did they cover the *Holiday* CVS case?

10:25:27 6 **A** No, sir. That doesn't ring a bell to my knowledge.

10:25:30 7 **Q** And it doesn't ring a bell even with you today, does  
10:25:32 8 it?

10:25:32 9 **A** No, sir.

10:25:41 10 **Q** I want to try and understand Rx Connect one last time  
10:25:44 11 even in today's incarnation. Okay?

10:25:49 12 **A** Yes, sir.

10:25:49 13 **Q** In today's incarnation, let's talk about what I think  
10:25:53 14 you can't see. And you fix this if I've got it wrong.  
10:25:55 15 Okay?

10:25:55 16 **A** Okay. I'm with you.

10:25:56 17 **Q** Does it give you information about CVS's  
10:26:01 18 investigations into suspicious prescribers?

10:26:05 19 **A** No, sir.

10:26:08 20 **Q** Does it give you information about CVS's analysts --  
10:26:13 21 no, about CVS's analysis of store dispensing habits?

10:26:19 22 **A** It does not, no, sir.

10:26:21 23 **Q** Does it give you information about whether prescribers  
10:26:25 24 are top volume prescribers for hydrocodone or oxycodone?

10:26:34 25 **A** No.



**Cook - Cross/Lanier**

10:26:36 1 **Q** Does it give you information about whether doctors are  
10:26:38 2 the top prescriber for a share of controlled drugs versus  
10:26:42 3 non-controlled drugs?

10:26:46 4 **A** I mean, like a pain management doctor obviously writes  
10:26:50 5 a lot more of a controlled drug than a non-controlled drug.  
10:26:53 6 I'm a little confused by the phrasing of that.

10:26:56 7 **Q** But will your Rx Connect give you the information  
10:26:58 8 about whether or not this doctor is a top prescriber for the  
10:27:02 9 shared controlled versus uncontrolled, or is that something  
10:27:05 10 you've just got to compute like oh, he's a pain doctor, it  
10:27:09 11 makes sense?

10:27:10 12 **A** It's something that, yeah, my years of practicing and  
10:27:12 13 living in Lake County, like I can identify which prescriber  
10:27:15 14 probably does write proportionately more controlled but does  
10:27:19 15 the system provide that information, the answer is no.

10:27:22 16 **Q** And does the system itself give you an alert for red  
10:27:27 17 flags that might be determined by the system?

10:27:31 18 **A** Well, the pharmacist practicing corresponding  
10:27:35 19 responsibility is the one to identify a red flag. I mean,  
10:27:38 20 or a potential red flag, I should actually say.

10:27:41 21 I -- the computer system alerting me wouldn't make me  
10:27:45 22 any more diligence in, you know, practicing my own  
10:27:48 23 corresponding responsibility.

10:27:49 24 I'm aware of potential red flags, how to resolve them.  
10:27:52 25 I really don't need the computer to tell me how to do it.

**Cook - Cross/Lanier**

10:27:54 1 **Q** All right.

10:27:55 2 That's whether or not you need it, but my question is  
10:27:57 3 does the computer give it.

10:27:59 4 **A** Well, and it depends, sir, like on your definition of  
10:28:02 5 a red flag. So let's say you want to tell me that a  
10:28:06 6 patient, you know, who lives in Mentor who sees a specialist  
10:28:10 7 in Akron for pain, you know, that medication, that patient  
10:28:14 8 address, that doctor address is provided to me in Rx  
10:28:16 9 Connect.

10:28:16 10 **Q** The doctor's address is, but does it alert you as a  
10:28:19 11 red flag, does it say -- some of the other defendants have  
10:28:22 12 something that will show red or something like that.

10:28:24 13 Does it do that for you?

10:28:25 14 **A** No, it doesn't do that, but again, being a  
10:28:28 15 Lake County, an Ohio resident for the 25 years, I can tell  
10:28:32 16 that particular potential red flag.

10:28:33 17 **Q** Okay. I'm at the end of the road. Thank you again.  
10:28:36 18 I wish you the best, especially with those three kids.

10:28:41 19 **A** Yes. Thank you.

10:28:42 20 **Q** Um-hmm.

10:28:43 21 THE COURT: Okay. I think if any of the  
10:28:45 22 jurors have any questions for Mr. Cook, if you'd provide  
10:28:50 23 those to Mr. Pitts, we'll take our med-morning break and  
10:28:54 24 then pick up with the juror questions and any counsel  
10:28:57 25 follow-up questions.

**Cook - Redirect/Miller**

10:29:19 1 (Brief pause in proceedings.)

10:29:19 2 THE COURT: Okay. So we can take our break

10:29:21 3 now.

10:29:27 4 (Jury excused from courtroom.)

10:31:21 5 (Recess was taken from 10:29 a.m. till 10:49 a.m.)

10:49:54 6 COURTROOM DEPUTY: All rise.

10:51:49 7 (Jury returned to courtroom.)

10:52:10 8 THE COURT: Okay. Please be seated.

10:52:14 9 MS. MILLER: May I proceed, Your Honor?

10:52:14 10 THE COURT: Yes.

10:52:15 11 Mr. Cook, I just want to remind you you're still under

10:52:17 12 oath from this morning.

10:52:18 13 And, Ms. Miller, you may proceed, please.

10:52:21 14 THE WITNESS: Thank you.

10:52:21 15

16

17

18

19

20

21

22

23

24

25

**Cook - Redirect/Miller**REDIRECT EXAMINATION OF KENNETH COOK

BY MS. MILLER:

**Q** Mr. Cook, the jurors have some questions for you so I'm just going to put them right up here.

Mr. Pitts, could I have the ELMO, please?

The first question from one of our jurors is do you document refusal to fills or do you just hand the script back to the patient?

**A** That's a good question.

My general practice when I refuse to fill a prescription, I will document on the hard copy the reason why, whether it's something I found or whether it's something I couldn't resolve.

Ultimately, the script is the property of the patient. So unless, you know, it was voided by the doctor, we have to hand that prescription back to the patient.

**Q** Are controlled substance medications counted and results logged daily?

Why don't we start with that question.

**A** Okay.

So speaking to just -- I'll start with opioids. They are logged. Inventory is once a month. We do a handful of counts a day, but by the end of like a month, we would have inventoried the entire safe.

With controlled substance medications, yes, we also

**Cook - Redirect/Miller**

10:53:45 1 it's called a cycle count. We count those. Not every day,  
10:53:49 2 but over the course of a month, they do get counted.

10:53:53 3 **Q** And where do you record those inventory results?

10:53:57 4 **A** Our inventory system is automated now. It's part of  
10:54:03 5 Rx Connect, like part of the system. If I were to find a  
10:54:06 6 discrepancy or there were an issue with inventory, it will  
10:54:09 7 alert me, you know, that what I entered is incorrect, you  
10:54:13 8 know, allowing me time to maybe go back and recount what I  
10:54:17 9 counted.

10:54:17 10 **Q** And the second juror question, are these counts double  
10:54:22 11 checked by another person?

10:54:25 12 **A** No.

10:54:26 13 However, over the course of the month, you know, you  
10:54:28 14 will have multiple pharmacists counting them. As pharmacy  
10:54:32 15 manager, for example, it's not my sole responsibility.  
10:54:36 16 There are -- it's the responsibility of the pharmacist on  
10:54:38 17 duty that particular day when that count drops to get it  
10:54:41 18 done. So it's not double checked, per se, but it's not all  
10:54:44 19 just done by me.

10:54:46 20 **Q** As a CVS pharmacist, do you have to document  
10:54:50 21 resolutions of red flags? If so, where do you document  
10:54:55 22 resolutions?

10:54:57 23 **A** Yes.

10:54:58 24 So, yeah, CVS, part of their policy is, and part of my  
10:55:02 25 training was to document the resolution of a red flag.

**Cook - Redirect/Miller**

10:55:06 1 Again, speaking to my early answer, it's my general  
10:55:09 2 practice to -- documentation is typically done in the  
10:55:11 3 patient profile in Rx Connect. It can also be done on the  
10:55:15 4 hard copy.

10:55:18 5 That's more so what I did back when I started, you  
10:55:20 6 know, as a pharmacist before we could add notes to a patient  
10:55:24 7 profile. So either one of those options.

10:55:32 8 **Q** And this is similar to one of the other juror  
10:55:36 9 questions we had at the start.

10:55:37 10 If a CVS pharmacist decides to refuse to fill a  
10:55:40 11 prescription, what is the process of that? Are there  
10:55:44 12 certain documents that have to be filled out?

10:55:47 13 **A** So refusing to fill, again, so we're going to -- let's  
10:55:52 14 -- in this hypothetical, say we're in a situation where  
10:55:55 15 there's a red flag that I can't resolve. I will just  
10:55:59 16 communicate very clearly to the patient that, you know,  
10:56:02 17 unfortunately, you know, there's an issue -- issue was  
10:56:04 18 found, you know, filling this prescription, you know. I  
10:56:06 19 need more information on it. We always give them the  
10:56:09 20 option, you know, to leave the prescription until we can  
10:56:11 21 resolve it.

10:56:14 22 In this situation, you know, it doesn't specifically  
10:56:16 23 say, but, you know, I just -- I'm honest with the patient.  
10:56:20 24 You know, you don't lie to them. You just say, you know,  
10:56:23 25 there's an issue, I have more questions, and I can't fill

**Cook - Redirect/Miller**

10:56:25 1 this at this time or I can't fill it until I hear back more  
10:56:28 2 information from the doctor.

10:56:29 3 Documents that have to be filled out, not to my  
10:56:33 4 knowledge. There are circumstances if the prescription is  
10:56:35 5 deemed to be fraudulent, then we are required to notify  
10:56:40 6 Board of Pharmacy as well as local law enforcement. But  
10:56:43 7 assuming it's not a fraudulent prescription, there is no --  
10:56:47 8 to my knowledge, there's no legal requirement for a refusal  
10:56:50 9 to fill documentation.

10:57:02 10 **Q** Do you have incidents where non-controlled medications  
10:57:08 11 are missing in the hundreds?

10:57:12 12 **A** Yes.

10:57:14 13 You know, we'll have people who misfile. Controlled  
10:57:20 14 medications, ladies and gentlemen, typically come in like a  
10:57:22 15 bottle of a hundred or smaller, typically speaking. Most of  
10:57:24 16 your blood pressure medications, most of your diabetes  
10:57:28 17 medications -- well, not most, but a good amount of them  
10:57:31 18 come in bottles of 500 or a thousand.

10:57:34 19 So the discrepancy earlier, you know, yes, we do see  
10:57:38 20 instances where non-controlled medications are missing,  
10:57:40 21 could be on the wrong spot on the shelf. Yes. That does  
10:57:44 22 happen.

10:57:47 23 **Q** Are controlled substances, in your experience, the  
10:57:51 24 medications that go missing most often when you check  
10:57:55 25 inventory?

**Cook - Redirect/Miller**

10:57:56 1 **A** So speaking to my experience, the answer is no.

10:57:59 2 Keep in mind, ladies and gentlemen, controlled  
10:58:02 3 medications are a very, very small percentage of the  
10:58:05 4 prescriptions that like I, as a pharmacist, fill on a  
10:58:07 5 typical day.

10:58:08 6 The majority of scripts that we have, like an  
10:58:11 7 inventory discrepancy, are non-controlled medications that  
10:58:14 8 we fill far more often of.

10:58:16 9 For example, if I fill, you know, for those of you  
10:58:19 10 familiar with, like, you know, Metformin for diabetes, we  
10:58:24 11 fill maybe like a thousand tablets a day. Over the course  
10:58:27 12 of a month, that's extremely more likely to be off than a  
10:58:30 13 controlled medication.

10:58:37 14 **Q** And the final question, what does the yearly  
10:58:44 15 evaluation process look like at CVS? Who completes the  
10:58:49 16 evaluations? Rubric? Are these evaluations tied to  
10:58:54 17 maintaining licensure or just for CVS?

10:58:57 18 **A** So, yes, the yearly evaluation process is typically  
10:59:01 19 completed in March of April or the prior calendar year.  
10:59:05 20 It's completed by my boss.

10:59:07 21 So when I was a pharmacist working in the store, it  
10:59:09 22 was my pharmacy supervisor and/or district leader. Now that  
10:59:13 23 I'm a district leader, it's obviously a little different.

10:59:16 24 There is a rubric that they go off of based on various  
10:59:21 25 aspects, ranging from like, you know, my -- like a score.



**Cook - Redirect/Miller**

10:59:25 1 There's also like my personality, you know, just my ability  
10:59:28 2 to lead a team.

10:59:32 3 What is evaluated? So again, -- and it's changed over  
10:59:36 4 the years, it's evolved. What's not evaluated anymore is  
10:59:40 5 like work flow scores, how efficiently we're processing  
10:59:43 6 prescriptions.

10:59:44 7 What's more evaluated, there's something called  
10:59:46 8 community responsibility. We have an independent auditor  
10:59:50 9 team come in and audit our pharmacies on a monthly basis to  
10:59:53 10 ensure -- try to find compliance with various things.  
10:59:57 11 That's a component.

10:59:58 12 Service scores for the store are a component. And  
11:00:02 13 then there's also for lack of a better word, I don't know  
11:00:05 14 what CVS calls it, like the human component, like my ability  
11:00:08 15 as a leader.

11:00:09 16 So if I had a bad evaluation year based on what I  
11:00:12 17 listed prior, they might say, well, you know, you're a good  
11:00:15 18 guy, tough situation maybe.

11:00:19 19 Evaluation tied to continuing licensure? No, it's  
11:00:22 20 just for CVS. I mean, if I did something bad enough to get  
11:00:25 21 a -- you know, get my license suspended, I'm probably not  
11:00:30 22 getting a yearly evaluation, but, no, that's just for  
11:00:33 23 internal CVS purposes.

11:00:37 24 **Q** All right.

11:00:37 25 I just have a few follow-up questions for you, Mr.

**Cook - Redirect/Miller**

11:00:41 1 Cook.

11:00:41 2 **A** Absolutely.

11:00:42 3 **Q** I want to take you back for a moment to the  
11:00:47 4 recordkeeping inventory-related issue that Mr. Lanier raised  
11:00:52 5 with you at Store 3326.

11:00:54 6 Do you remember that?

11:00:55 7 **A** I do remember, yes.

11:00:56 8 **Q** And you had just assumed responsibility as the  
11:01:02 9 pharmacy manager of 3326 when you discovered the paperwork  
11:01:08 10 inventory issue; right?

11:01:08 11 **A** That is correct.

11:01:10 12 **Q** And you testified earlier that you contacted the DEA;  
11:01:15 13 correct?

11:01:15 14 **A** That is correct.

11:01:16 15 **Q** You contacted the Board of Pharmacy?

11:01:18 16 **A** Correct.

11:01:18 17 **Q** Did you also contact Lake County Narcotics?

11:01:21 18 **A** Yes, and I omitted to say I obviously also contacted  
11:01:26 19 my CVS supervisor as well.

11:01:28 20 **Q** And did all of those entities that you just named, did  
11:01:31 21 they visit the store?

11:01:32 22 **A** Yes.

11:01:34 23 **Q** And did you work with them during those visits to  
11:01:39 24 discuss the issue and share with them what you had learned?

11:01:42 25 **A** Yes, we did.

**Cook - Redirect/Miller**

11:01:43 1 **Q** Did you subsequently correct the paperwork issues?

11:01:46 2 **A** Yes.

11:01:47 3 **Q** And did any of those regulators issue any citations?

11:01:52 4 **A** No, not to my knowledge, there was no citation.

11:01:57 5 **Q** Any fines?

11:01:57 6 **A** Not to my knowledge, no.

11:02:02 7 **Q** Back to Rx Connect for just one moment.

11:02:05 8 Mr. Lanier was asking you a little bit about alerts in  
11:02:09 9 Rx Connect.

11:02:10 10 Do you recall that?

11:02:11 11 **A** I do recall that questioning.

11:02:12 12 **Q** And just one question on this.

11:02:16 13 Do you feel you need any more alerts than you already  
11:02:20 14 have to exercise corresponding responsibility?

11:02:23 15 **A** I do not.

11:02:29 16 **Q** Last, Mr. Cook. Mr. Lanier also asked you about a  
11:02:34 17 Dr. David Demangone.

11:02:37 18 Do you recall that?

11:02:38 19 **A** I recall that question.

11:02:39 20 **Q** And you testified that around 2014, you stopped  
11:02:43 21 filling controlled substance prescriptions for  
11:02:48 22 Dr. Demangone; is that right?

11:02:48 23 **A** To the best of my knowledge, that date is correct,  
11:02:50 24 yes.

11:02:50 25 **Q** And to the best of your knowledge, had others of your

**Cook - Redirect/Miller**

11:02:53 1 colleagues at CVS also stopped filling prescriptions for  
11:02:59 2 Dr. Demangone?

11:03:00 3 **A** Yes, they had.

11:03:01 4 **Q** Are you aware that Dr. Demangone has a sign in his  
11:03:04 5 office regarding CVS?

11:03:06 6 **A** Yes, I am aware of that sign.

11:03:07 7 **Q** And what does that sign say?

11:03:09 8 **A** It says -- taped, like right when you would walk in to  
11:03:14 9 check in with your doctor's office where they might have all  
11:03:16 10 those fliers, it says, "Do not fill RX at CVS," also says or  
11:03:22 11 Walmart.

11:03:22 12 **Q** And, Mr. Cook, I'm showing you CVS-MDL-04243.

11:03:31 13 **A** Yes.

11:03:31 14 **Q** Do you recognize this sign?

11:03:32 15 **A** I do. I recognize that sign.

11:03:34 16 **Q** And is that the sign that you've seen in  
11:03:38 17 Dr. Demangone's office?

11:03:38 18 **A** Yes, I have personally seen that sign, yes.

11:03:42 19 MS. MILLER: Thank you very much, Mr. Cook.  
11:03:44 20 That's all I have.

11:03:44 21 THE WITNESS: Thank you.

11:03:47 22 THE COURT: I assume nothing from any other  
11:03:49 23 defendants?

11:03:50 24 MR. STOFFELMAYR: No, Your Honor.

11:03:51 25 MR. MAJORAS: No, sir.

**Cook - Recross/Lanier**

11:03:52 1 THE COURT: All right.

11:03:52 2 Mr. Lanier, anything from you?

11:03:54 3 MR. LANIER: I'm going to ask one -- one or  
11:03:57 4 two quickies.

11:03:58 5 THE COURT: All right.

11:04:03 6 RECROSS-EXAMINATION OF KENNETH COOK

11:04:05 7 BY MR. LANIER

11:04:05 8 **Q** Did you do a check on this when you saw the sign?  
11:04:08 9 When did you see it, by the way?

11:04:10 10 **A** It was earlier this year. Maybe several -- several  
11:04:14 11 weeks ago to the best of my knowledge.

11:04:16 12 **Q** Several weeks ago, getting ready to testify in this  
11:04:19 13 case?

11:04:19 14 **A** I actually was a pharmacist at 4351, across the street  
11:04:23 15 at that time, and his office was literally across -- I'm  
11:04:25 16 sorry. I don't know the name of the street, so just figured  
11:04:28 17 I'd pop in and see it.

11:04:29 18 **Q** Well, yeah. I understand. And I'm not -- I don't  
11:04:32 19 mean to fuss over it. I'm just making sure I've got the  
11:04:35 20 timing right.

11:04:35 21 **A** Yes, sir, several weeks.

11:04:36 22 **Q** Yeah.

11:04:37 23 But in the meantime, did you bother to check to see  
11:04:39 24 whether or not the dosage data that y'all have given us  
11:04:45 25 shows that CVS filled 2,765,660 dosage units for

**Cook - Recross/Lanier**

11:04:55 1 Dr. Demangone over the last number of years that y'all have  
11:05:00 2 given us the data?

11:05:02 3 MS. MILLER: Objection.

11:05:04 4 **Q** Did you look?

11:05:05 5 THE COURT: Overruled.

11:05:06 6 THE WITNESS: The question is did I look?

11:05:07 7 BY MR. LANIER:

11:05:08 8 **Q** Yeah, to see how much y'all filled of the gentleman,  
11:05:10 9 aside from just seeing the sign in his window now?

11:05:15 10 MS. MILLER: Objection, Your Honor.

11:05:17 11 THE COURT: Overruled.

11:05:17 12 THE WITNESS: With all due respect, I don't  
11:05:19 13 know if I'd have access to that company-wide data.

11:05:23 14 MR. LANIER: Okay. Thank you.

11:05:23 15 That's all I have, Your Honor.

11:05:24 16 THE COURT: Okay. Thank you very much, sir.

11:05:27 17 We appreciate your testimony, and you may step down.

11:05:29 18 THE WITNESS: Thank you, Your Honor.

11:05:39 19 MS. SWIFT: Your Honor, may we proceed with  
11:05:41 20 our next witness?

11:05:42 21 THE COURT: Yes, you may.

11:05:43 22 MS. SWIFT: The pharmacies call Demetra Ashley  
11:05:46 23 by deposition.

11:05:47 24 Ms. Ashley worked at the Drug Enforcement  
11:05:50 25 Administration for more than 30 years. When she retired in

**Deposition of Demetra Ashley**

11:05:52 1 2018, she was a senior administrator in the DEA's Office of  
11:05:56 2 Diversion Control, a similar role to the role that  
11:06:01 3 Joe Rannazzisi held for a period of time before her.

11:06:06 4 During her career at DEA, Ms. Ashley also worked as a  
11:06:09 5 diversion investigator in Detroit and Chicago for a number  
11:06:12 6 of years and was head of the Chicago's field division before  
11:06:15 7 moving to DEA headquarters.

11:06:17 8 The pharmacies questioning of Ms. Ashley is about  
11:06:21 9 44 minutes long. Plaintiffs' questioning is about  
11:06:24 10 19 minutes long.

11:06:24 11 DEPOSITION TESTIMONY OF DEMETRA ASHLEY

11:06:24 12 BY MS. SWIFT

11:06:35 13 **Q** Good morning, Ms. Ashley.

11:06:37 14 My name is Kate Swift and I represent Walgreens.  
11:06:40 15 Thank you for being with us here today.

11:06:42 16 My first question for you is do you live and work in  
11:06:44 17 Chicago?

11:06:45 18 **A** Yes.

11:06:47 19 **Q** If I understand your resumè correctly, you worked at  
11:06:50 20 the Drug Enforcement Administration for more than 30 years;  
11:06:54 21 is that right?

11:06:54 22 **A** Yes.

11:06:56 23 **Q** Did you work as a DEA diversion investigator in both  
11:07:01 24 Detroit and Chicago for a number of years?

11:07:03 25 **A** Yes.

**Deposition of Demetra Ashley**

11:07:05 1 **Q** Were you also head of the Chicago field division for  
11:07:08 2 the DEA for a number of years?

11:07:11 3 **A** For diversion, yes.

11:07:13 4 **Q** In that role as head of DEA's Chicago Field Division  
11:07:18 5 Office For Diversion, were you in charge of diversion  
11:07:22 6 control for five states?

11:07:24 7 **A** Yes.

11:07:25 8 **Q** Is that what you were doing from around 2007 until  
11:07:29 9 2015?

11:07:30 10 **A** Yes.

11:07:31 11 **Q** I understand you also worked at DEA headquarters for a  
11:07:35 12 number of years in different roles; is that right?

11:07:38 13 **A** Yes.

11:07:39 14 **Q** Were you the acting assistant administrator for DEA's  
11:07:43 15 Office of Diversion Control for a period of time?

11:07:47 16 **A** Yes.

11:07:49 17 **Q** That was a senior executive role?

11:07:54 18 **A** Senior executive, correct.

11:07:55 19 **Q** When did you leave the DEA?

11:07:57 20 **A** March of 2018.

11:07:58 21 **Q** Ms. Ashley, in your experience, with more than  
11:08:02 22 30 years at the DEA, is it your understanding that DEA  
11:08:05 23 regulates medications that are classified as controlled  
11:08:09 24 substances?

11:08:09 25 **A** Yes.



**Deposition of Demetra Ashley**

11:08:10 1 **Q** Does that include prescription opioid medications such  
11:08:13 2 as oxycodone?

11:08:15 3 **A** Yes.

11:08:16 4 **Q** Can a doctor write a prescription for an opioid  
11:08:19 5 medication without a DEA registration?

11:08:22 6 **A** No.

11:08:26 7 **Q** Do prescribers have to renew their DEA registration on  
11:08:30 8 a regular basis?

11:08:31 9 **A** Yes.

11:08:32 10 **Q** Do you recall how often prescribers have to renew  
11:08:36 11 their DEA registration?

11:08:38 12 **A** Every three years.

11:08:40 13 **Q** Can the DEA revoke a doctor's registration to  
11:08:43 14 prescribe opioids if DEA determines that that prescriber's  
11:08:48 15 doing so is not in the public interest?

11:08:51 16 **A** Yes.

11:08:52 17 **Q** Can the DEA investigate and recommend criminal charges  
11:08:56 18 against doctors who write illegitimate prescriptions for  
11:09:00 19 opioids?

11:09:00 20 **A** Yes.

11:09:02 21 **Q** What is a rogue pain clinic?

11:09:04 22 **A** It's a clinic where they are likely operating -- we  
11:09:11 23 used to call them pill mills, where there's, you know, lines  
11:09:14 24 out the door and physicians are writing prescriptions, you  
11:09:18 25 know, for no legitimate medical need, like, they're not --

**Deposition of Demetra Ashley**

11:09:21 1 they're not within compliance of the Controlled Substances  
11:09:24 2 Act.

11:09:24 3 **Q** Is a pill mill the same thing as a rogue pain clinic,  
11:09:28 4 in your understanding?

11:09:29 5 **A** Pretty much, yeah.

11:09:30 6 **Q** At rogue pain clinics and pill mills, is it your  
11:09:33 7 understanding, from your experience at the DEA, that doctors  
11:09:37 8 were both writing and dispensing pain medications without a  
11:09:40 9 legitimate medical purpose?

11:09:42 10 **A** Yes, on some occasions, yes.

11:09:45 11 **Q** Based on your experience at DEA, is it true that pill  
11:09:50 12 mills were a problem all over the country in this time  
11:09:54 13 frame?

11:09:54 14 **A** Yeah, I think so. Yes.

11:09:56 15 **Q** Was that true in 2011, 2012, 2013, that pill mills  
11:10:00 16 were a problem all over the country?

11:10:03 17 **A** I believe so, yes.

11:10:08 18 **Q** You already testified that rogue pain clinics are  
11:10:11 19 basically the same thing as pill mills.

11:10:14 20 Is it fair to say that rogue pain clinics were also a  
11:10:17 21 problem all over the country in the 2011, 2012, 2013 time  
11:10:23 22 frame?

11:10:23 23 **A** I believe so.

11:10:26 24 **Q** Would you agree that rogue pain clinics and pill mills  
11:10:30 25 were a big part of the prescription opioid problem in the

**Deposition of Demetra Ashley**

11:10:34 1 2011, 2012, 2013 time frame?

11:10:37 2 **A** Yes. I believe it was part of the problem, yes.

11:10:40 3 **Q** Do you agree, based on your 30-plus years at DEA, that  
11:10:44 4 pharmacy employees have been an important source of  
11:10:47 5 cooperation and assistance in investigations of pill mills  
11:10:50 6 over the years?

11:10:52 7 **A** I believe they have been an important source, yes.

11:10:58 8 MS. SWIFT: This will be Exhibit 5 to the  
11:11:00 9 deposition.

11:11:03 10 BY MS. SWIFT:

11:11:04 11 **Q** Ms. Ashley, do you recognize what I marked as  
11:11:07 12 Exhibit 5 as a statement that you gave to the Senate  
11:11:13 13 Judiciary Committee in 2017?

11:11:17 14 **A** Yes.

11:11:19 15 **Q** If you turn to Page 4, I would like to ask you about  
11:11:26 16 your statement in the bottom paragraph.

11:11:31 17 You told the Senate Judiciary Committee that since  
11:11:35 18 2014, DEA has observed a decline in prescriptions written  
11:11:38 19 for certain Schedule II opioids; is that right?

11:11:43 20 **A** That's right.

11:11:50 21 **Q** Would you agree that doctors in general stopped  
11:11:52 22 writing so many opioid prescriptions in that time frame, not  
11:11:55 23 just bad doctors who may have been operating out of a pill  
11:11:59 24 mill or a pain clinic, a rogue pain clinic.

11:12:03 25 Would you agree with that?

**Deposition of Demetra Ashley**

11:12:03 1 **A** Yeah, it's likely, yes.

11:12:05 2 **Q** Following the decrease in doctors writing  
11:12:10 3 prescriptions for opioids, DEA reduced the amount of opioids  
11:12:15 4 that could be manufactured each year; correct?

11:12:20 5 **A** Yeah. But, again, that's part of the consideration.  
11:12:23 6 But, yes, that did happen.

11:12:25 7 **Q** In your statement to the Senate Judiciary Committee  
11:12:31 8 that I marked as Exhibit 5, you said in October 2016, DEA  
11:12:39 9 announced a 25 percent reduction or more in the 2017 APQs,  
11:12:46 10 or quotas, for many prescription opioids, including  
11:12:51 11 oxycodone, hydrocodone, fentanyl, hydromorphone and  
11:12:55 12 morphine; correct?

11:12:55 13 **A** Correct.

11:12:57 14 **Q** You went on to say that hydrocodone was reduced to  
11:13:02 15 66 percent of the previous year's 2016 level; correct?

11:13:07 16 **A** Correct.

11:13:08 17 **Q** Do you see that, what I've marked as Exhibit 6, is a  
11:13:18 18 hearing transcript from the Committee on the Judiciary of  
11:13:22 19 the House of Congress from May of 2018?

11:13:27 20 **A** Okay.

11:13:28 21 **Q** And if you'd look at Page 3, the table of contents,  
11:13:33 22 you can see that the witnesses who testified, the first one  
11:13:37 23 on the list is Robert W. Patterson, Acting Administrator,  
11:13:42 24 Drug Enforcement Administration.

11:13:42 25 Do you see that?

**Deposition of Demetra Ashley**

11:13:44 1 **A** Yes.

11:13:46 2 **Q** Turn, if you would, please, to Page 32 of this hearing  
11:13:53 3 transcript that I marked as Exhibit 6.

11:13:59 4 Do you see close to the top of the page where it says  
11:14:03 5 Mr. Patterson?

11:14:04 6 **A** Yes.

11:14:06 7 **Q** Mr. Patterson testified, "I look at the vast majority  
11:14:10 8 of doctors, 99.99 percent are all trying to do right by  
11:14:16 9 their patients."

11:14:16 10 Do you agree with that statement based on your  
11:14:18 11 experience at DEA?

11:14:20 12 **A** I believe the vast majority, yes, are trying to do the  
11:14:23 13 right thing, yes.

11:14:25 14 **Q** When those vast majority of doctors who are trying to  
11:14:29 15 do right by their patients, when they write prescriptions  
11:14:32 16 for opioid medications, would you agree that it's  
11:14:36 17 appropriate for pharmacists to fill those legitimate  
11:14:39 18 prescriptions?

11:14:40 19 **A** Sure, if they make an independent judgment, yeah.  
11:14:44 20 Yes.

11:14:45 21 **Q** And, in fact, would you also agree that part of DEA's  
11:14:48 22 mission is to ensure an adequate supply of controlled  
11:14:54 23 substance medications, including opioids, to meet the  
11:14:56 24 legitimate medical needs of patients?

11:14:59 25 **A** Yes.

**Deposition of Demetra Ashley**

11:15:00 1 **Q** Would you agree, Ms. Ashley, that even if a doctor  
11:15:04 2 does right by her patients and writes a legitimate  
11:15:08 3 prescription, and the pharmacist properly fills that  
11:15:12 4 prescription in her professional judgment, that it is a  
11:15:16 5 legitimate prescription, even if those things both happen,  
11:15:20 6 it is still possible for that medication to get into the  
11:15:23 7 wrong hands through no fault of the pharmacist or the  
11:15:26 8 doctor?

11:15:27 9 **A** That is possible, yes.

11:15:29 10 **Q** All right.

11:15:30 11 Turn back to what was -- it was in Exhibit Q. So you  
11:15:37 12 took it out of the envelope. I'll tell you what it is on  
11:15:41 13 the first page.

11:15:42 14 **A** I tried to keep them organized. Let's see.

11:15:46 15 **Q** This is the one that was marked as Exhibit 1 and it's  
11:15:51 16 your PowerPoint presentation that says Pharmacy Track, Drug  
11:15:57 17 Enforcement Administration Regulations Update on the first  
11:15:59 18 page. It's got a green and blue banner.

11:16:02 19 **A** This one, yes.

11:16:03 20 **Q** Yeah. That's it. Okay.

11:16:04 21 We're going to go to Page 10 of Exhibit 1. And I  
11:16:09 22 should ask you, do you recall giving this presentation?

11:16:12 23 **A** I don't specifically recall giving it, but I've -- I'm  
11:16:15 24 familiar with this, I think. I'm pretty certain it's me,  
11:16:18 25 yeah, that gave this.

**Deposition of Demetra Ashley**

11:16:19 1 **Q** On Page 10 of your presentation marked as Exhibit 1,  
11:16:25 2 you wrote, "Most frequent method of obtaining pharmaceutical  
11:16:29 3 controlled substance for non-medical use, friends and  
11:16:33 4 family...for free," correct?

11:16:35 5 **A** Yes.

11:16:36 6 **Q** Would you agree with me that those prescriptions that  
11:16:40 7 people may obtain from their friends or their family, those  
11:16:43 8 prescriptions may have been legitimately written?

11:16:46 9 **A** Yes.

11:16:48 10 **Q** Would you agree with me that those prescriptions may  
11:16:52 11 have been legitimately filled by a pharmacist?

11:16:54 12 **A** Yes.

11:16:54 13 **Q** Does the DEA, in your understanding, register every  
11:16:58 14 pharmacy that dispenses controlled substances to patients?

11:17:04 15 **A** Yes.

11:17:06 16 MS. SWIFT: This will be Exhibit 8 to  
11:17:08 17 Ms. Ashley's deposition.

11:17:10 18 BY MS. SWIFT:

11:17:10 19 **Q** Ms. Ashley, do you see that this is the DEA's  
11:17:13 20 Pharmacist's Manual that I marked as Exhibit 8?

11:17:15 21 **A** Yes.

11:17:17 22 **Q** Is the DEA's Pharmacist's Manual, is that, in your  
11:17:23 23 experience, is that published guidance from DEA for  
11:17:27 24 pharmacists on the Controlled Substances Act?

11:17:32 25 **A** Yes.

**Deposition of Demetra Ashley**

11:17:34 1 **Q** Do you see the heading "Renewal of Pharmacy  
11:17:37 2 Registration" on Page 14?

11:17:39 3 **A** Yes.

11:17:41 4 **Q** It says, "A pharmacy registration must be renewed  
11:17:44 5 every three years" --

11:17:46 6 **A** Three years, okay. Yes.

11:17:47 7 **Q** Was that -- was the same true when you were at the  
11:17:51 8 DEA?

11:17:52 9 **A** Yes.

11:17:55 10 **Q** Now, if you'll look at Page 18 of the Pharmacist's  
11:18:04 11 Manual, do you see the heading, "Denial of Registration in  
11:18:08 12 the Public Interest"?

11:18:09 13 **A** Yes.

11:18:10 14 **Q** Is it correct that DEA can deny a pharmacy a  
11:18:15 15 registration if it -- if DEA deems that to be in the public  
11:18:20 16 interest?

11:18:20 17 **A** Yes.

11:18:23 18 **Q** Was that also true when you were at the DEA?

11:18:25 19 **A** Yes.

11:18:27 20 **Q** Does DEA also have the authority to suspended or  
11:18:32 21 revoke a pharmacy's DEA registration?

11:18:35 22 **A** Yes.

11:18:37 23 **Q** Does the DEA have the authority to inspect each  
11:18:41 24 pharmacy that it registers in person and review its records?

11:18:46 25 **A** Yes, they have the authority to do that.



**Deposition of Demetra Ashley**

11:18:49 1 **Q** Does DEA have access to data regarding the pharmacy's  
11:18:52 2 purchases and sales of controlled substances?

11:18:56 3 **A** Yes.

11:18:57 4 **Q** Ms. Ashley, based on your experience at DEA, does DEA  
11:19:01 5 use the types of data that you just testified about, ARCOS  
11:19:06 6 shipping data, state prescription monitoring data, to  
11:19:09 7 investigate pharmacies?

11:19:11 8 **A** Yes.

11:19:12 9 **Q** Does DEA use that type of data to investigate doctors?

11:19:17 10 **A** Yes.

11:19:18 11 **Q** Does DEA use that type of data to investigate  
11:19:20 12 individual patients?

11:19:23 13 **A** I -- well, some of it, yes. Not ARCOS, I don't think,  
11:19:30 14 no, but PDMP, yes.

11:19:34 15 **Q** Does DEA use that type of data to help ensure that  
11:19:40 16 pharmacies are following the law?

11:19:42 17 **A** Yes.

11:19:43 18 **Q** DEA's regulation on the filling of controlled  
11:19:50 19 substance prescriptions by pharmacists is called the  
11:19:55 20 Corresponding Responsibility Regulation; is that right?

11:19:58 21 **A** Yes.

11:20:00 22 **Q** If you'll take a look in the Pharmacist's Manual,  
11:20:05 23 which is Exhibit 8, at Page 42.

11:20:13 24 Do you see that the Corresponding Responsibility  
11:20:16 25 Regulation is described there?

**Deposition of Demetra Ashley**

11:20:17 1 **A** Yes.

11:20:17 2 **Q** That regulation is 21 CFR 1306.04(a), correct?

11:20:24 3 **A** Yes.

11:20:26 4 **Q** The Corresponding Responsibility Regulation says that,  
11:20:31 5 "A pharmacist has a corresponding responsibility for the  
11:20:33 6 proper dispensing of controlled substances," correct?

11:20:37 7 **A** Yes.

11:20:38 8 **Q** That was true the entire time you were at the DEA as  
11:20:42 9 well; right?

11:20:43 10 **A** Correct.

11:20:45 11 **Q** And the next paragraph of the Pharmacist's Manual, at  
11:20:50 12 Page 42, DEA's guidance, is that, "A pharmacist is required  
11:20:55 13 to exercise sound professional judgment and to adhere to  
11:20:59 14 professional standards when making a determination about the  
11:21:02 15 legitimacy of a controlled substance prescription," correct?

11:21:07 16 **A** Correct.

11:21:08 17 **Q** Do you agree with that, based on your experience at  
11:21:11 18 DEA?

11:21:12 19 **A** Yes, I agree with that.

11:21:14 20 **Q** Would you agree that there are many ways a pharmacist  
11:21:17 21 might satisfy herself that a prescription for a controlled  
11:21:20 22 substance is legitimate?

11:21:22 23 **A** Yes.

11:21:23 24 **Q** For example, a pharmacist might talk to the patient  
11:21:26 25 about a drug combination to make sure the patient

**Deposition of Demetra Ashley**

11:21:30 1 understands the potential side effects. That's one way she  
11:21:33 2 might resolve the red flag?

11:21:34 3 **A** That's one way, yes.

11:21:36 4 **Q** A pharmacist might also call the doctor to get a  
11:21:38 5 better understanding of the prescription.

11:21:40 6 Would you agree with that?

11:21:41 7 **A** I agree.

11:21:42 8 **Q** The pharmacist might check the State Prescription Drug  
11:21:45 9 Monitoring Program to see if the patient has been filling  
11:21:48 10 similar prescriptions at other pharmacies.

11:21:49 11 Would you agree with that?

11:21:50 12 **A** I agree.

11:21:51 13 **Q** Would you agree that checking the State Prescription  
11:21:55 14 Drug Monitoring Program may be required depending on state  
11:21:58 15 law?

11:21:58 16 **A** I agree.

11:21:59 17 **Q** Would you agree with me that the pharmacist might  
11:22:03 18 document what she did, particularly if she thinks there is a  
11:22:07 19 red flag on a prescription?

11:22:09 20 **A** I agree.

11:22:11 21 **Q** Would you agree with me that there is no DEA  
11:22:14 22 requirement that the pharmacist document the steps she takes  
11:22:16 23 to resolve a red flag before filling a prescription?

11:22:24 24 **A** A federal requirement, no, I don't think there is.  
11:22:26 25 That they document it, that's what you're asking me?

**Deposition of Demetra Ashley**

11:22:29 1 **Q** Yes, that's what I asked you.

11:22:30 2 **A** Yeah.

11:22:33 3 **Q** There is no federal requirement to document the  
11:22:35 4 resolution of red flags, is that what you said?

11:22:37 5 **A** To document the resolution, not that I can recall, no.

11:22:41 6 **Q** The pharmacist might look at a prescription for an  
11:22:46 7 unusual quantity or combination of drugs and determine,  
11:22:50 8 based on her knowledge of that patient, that the  
11:22:53 9 prescription presents no issues.

11:22:54 10 Would you agree with that?

11:22:56 11 **A** Based on her knowledge of that patient?

11:22:59 12 **Q** Yes.

11:23:00 13 **A** That they may decide to fill the prescription? Yeah,  
11:23:05 14 that's possible. Yes.

11:23:06 15 **Q** The pharmacist might determine that there is not a red  
11:23:10 16 flag on that prescription based on her knowledge of the  
11:23:11 17 patient, the doctor, or other circumstances.

11:23:14 18 Would you agree with that?

11:23:15 19 **A** I agree.

11:23:16 20 **Q** In the pharmacist's professional judgment, she might  
11:23:21 21 determine that the prescription is legitimate and  
11:23:25 22 appropriately fill it, even if it is for a large quantity of  
11:23:29 23 opioids.

11:23:29 24 Would you agree with that?

11:23:31 25 **A** Based on other knowledge?

**Deposition of Demetra Ashley**

11:23:35 1 Q Yes.

11:23:36 2 A Yes, I do agree with that.

11:23:37 3 Q The pharmacist might, in her professional judgment,  
11:23:40 4 determine that a prescription is legitimate and  
11:23:43 5 appropriately fill it even if it is for an unusual  
11:23:46 6 combination of drugs.

11:23:47 7 Would you agree with that?

11:23:50 8 A Yes.

11:23:51 9 Q The pharmacist, in her professional judgment, might  
11:23:54 10 determine that a prescription is legitimate and  
11:23:58 11 appropriately fill it even if the patient traveled a long  
11:24:02 12 distance to visit the doctor or the pharmacy?

11:24:08 13 A Well, yeah, I guess there would be additional  
11:24:13 14 information. I mean, it would have to be additional  
11:24:16 15 information, but sure, they may.

11:24:18 16 Q The same is true even if the patient paid in cash; the  
11:24:23 17 pharmacist might determine, in her professional judgment,  
11:24:24 18 based on her knowledge, that that prescription is legitimate  
11:24:27 19 and appropriately fill that prescription?

11:24:29 20 A There are circumstances that would make that true,  
11:24:32 21 yes.

11:24:32 22 Q There may be any number of good reasons to fill a  
11:24:35 23 prescription that was paid in cash.

11:24:36 24 Would you agree with that?

11:24:38 25 A Yes.

**Deposition of Demetra Ashley**

11:24:40 1 **Q** If a prescription bears red flags, it does not  
11:24:44 2 necessarily mean that it lacks a legitimate medical purpose.

11:24:47 3 Would you agree with that?

11:24:48 4 **A** I agree with that.

11:24:49 5 **Q** If a prescription bears a red flag, it does not  
11:24:52 6 necessarily mean that a patient does not need that  
11:24:55 7 medication to treat her condition.

11:24:56 8 Would you agree with that?

11:24:58 9 **A** I agree with that.

11:24:59 10 **Q** If a prescription bears red flags, it does not  
11:25:02 11 necessarily mean that it will lead to diversion.

11:25:04 12 Would you agree with that?

11:25:06 13 **A** I agree with that.

11:25:08 14 **Q** The DEA does not have a requirement that a pharmacy  
11:25:11 15 conduct a computer data analysis on its prescription records  
11:25:16 16 before a pharmacist fills a prescription?

11:25:19 17 **A** No, there is no -- that I'm aware of, that I can  
11:25:22 18 recall, no.

11:25:23 19 **Q** In your experience in more than 30 years at the DEA,  
11:25:27 20 can you think of any published guidance by DEA suggesting  
11:25:31 21 that pharmacies conduct computer data analysis on their  
11:25:34 22 prescription records?

11:25:36 23 **A** Published guidance, not that I recall.

11:25:39 24 **Q** Would you agree with me, Ms. Ashley, that even if a  
11:25:43 25 pharmacy has a computer system doing some sort of data

**Deposition of Demetra Ashley**

11:25:46 1 analysis, the pharmacist still has to exercise her  
11:25:50 2 professional judgment before filling a prescription?

11:25:54 3 **A** Yes, I agree with that.

11:25:55 4 **Q** Based on your experience at DEA, is it true that State  
11:26:00 5 Boards of Pharmacy are charged with investigating pharmacies  
11:26:05 6 that don't follow the law?

11:26:06 7 **A** Yes, I agree with that.

11:26:08 8 **Q** Is it your understanding that State Boards of Pharmacy  
11:26:10 9 are also law enforcement agencies?

11:26:14 10 **A** I don't know that always.

11:26:16 11 **Q** Do you know that that's sometimes the case, as in  
11:26:19 12 Ohio?

11:26:19 13 **A** Yes, I think it's sometimes the case, yes.

11:26:23 14 **Q** Do you understand that State Board of Pharmacies do  
11:26:25 15 revoke licenses when pharmacies violate the law?

11:26:29 16 **A** Yes.

11:26:33 17 **Q** Do you agree, Ms. Ashley, that internet pharmacies  
11:26:35 18 were a significant problem for a period of time?

11:26:39 19 **A** Yes, I agree with that.

11:26:41 20 **Q** When it comes to the corresponding responsibility  
11:26:46 21 obligation, would you agree with me, based on your  
11:26:52 22 experience at DEA, that the law is the same for every  
11:26:55 23 pharmacist, whether that pharmacist is employed by a large  
11:26:57 24 chain like Walgreens or a single mom and pop pharmacy?

11:27:02 25 **A** The law is the same, correct.

**Deposition of Demetra Ashley**

11:27:04 1 **Q** Do the Controlled Substances Act and its regulations  
11:27:08 2 require the same thing of every registered pharmacy, whether  
11:27:12 3 that pharmacy is part of a big chain or stands all by  
11:27:16 4 itself?

11:27:17 5 **A** Yes. The law is the same, yes.

11:27:20 6 **Q** Ms. Ashley, in your time at the DEA, did DEA work with  
11:27:24 7 pharmacy chains and pharmacy associations, like the National  
11:27:28 8 Association of Boards of Pharmacy, to develop a consensus  
11:27:33 9 around potential red flags a pharmacist might identify on a  
11:27:39 10 controlled substance prescription?

11:27:40 11 **A** Yes.

11:27:42 12 MS. SWIFT: This will be Exhibit 13.

11:27:46 13 BY MS. SWIFT:

11:27:46 14 **Q** Is the document that I marked as Exhibit 13, is this a  
11:27:49 15 consensus document that DEA worked on with the National  
11:27:52 16 Association of Boards of Pharmacy and others on red flag  
11:27:58 17 warning signs related to prescribing and dispensing  
11:28:01 18 controlled substances?

11:28:03 19 **A** Yes.

11:28:04 20 **Q** You can -- you can see that there's a list of  
11:28:06 21 stakeholders on the first page of this consensus document  
11:28:10 22 that I marked as Exhibit 13.

11:28:11 23 Do you see that?

11:28:12 24 **A** Yes.

11:28:13 25 **Q** CVS, Walgreens, and Rite Aid are all listed among the



**Deposition of Demetra Ashley**

11:28:18 1 stakeholders on this consensus document about red flags;  
11:28:25 2 correct?

11:28:25 3 **A** Yes.

11:28:26 4 **Q** There are also a number of organizations listed as  
11:28:29 5 stakeholders on this consensus document, including the  
11:28:32 6 American Medical Association.

11:28:33 7 Do you see that?

11:28:34 8 **A** Yes.

11:28:36 9 **Q** The National Association of Boards of Pharmacy is  
11:28:38 10 listed.

11:28:38 11 Do you see that?

11:28:39 12 **A** Yes.

11:28:40 13 **Q** The National Association of Chain Drug Stores is  
11:28:42 14 listed.

11:28:43 15 Do you see that?

11:28:45 16 **A** Yes.

11:28:45 17 **Q** And there are a number of other associations of  
11:28:49 18 various types of healthcare providers.

11:28:52 19 Do you see that?

11:28:52 20 **A** Yes.

11:28:55 21 **Q** Do you agree, based on your career at DEA, that  
11:29:00 22 putting together a document like this stakeholder's document  
11:29:04 23 on red flag warning signs was a good thing for these  
11:29:08 24 pharmacists -- pharmacies and other organizations to do?

11:29:11 25 **A** Yes, I agree it was a good thing.

**Deposition of Demetra Ashley**

11:29:13 1 **Q** And I think you just testified that DEA worked with  
11:29:17 2 these pharmacies and other organizations on this consensus  
11:29:22 3 document; is that right?

11:29:22 4 **A** That's right.

11:29:24 5 **Q** If you take a look at the bottom of Page 2 of this  
11:29:30 6 consensus document on red flags, at the very end of the last  
11:29:39 7 paragraph, do you see where it says, "The consensus  
11:29:44 8 document, however, is not to be construed as establishing  
11:29:46 9 any standards of care" -- are you with me?

11:29:49 10 **A** I do see it.

11:29:50 11 **Q** "Consensus document, however, is not to be construed  
11:29:53 12 as establishing any standard of care but considered as  
11:29:57 13 general guidelines and as a reminder that healthcare  
11:30:01 14 practitioners must comply with federal laws and regulations  
11:30:03 15 and use their professional judgment when confronted with red  
11:30:07 16 flag warnings and aberrant patient behaviors in regard to  
11:30:13 17 controlled substance prescriptions."

11:30:15 18 Do you agree with that statement?

11:30:17 19 **A** Yes, I do.

11:30:18 20 **Q** It's also consistent with what DEA put in its  
11:30:22 21 Pharmacist's Manual that pharmacists must use their  
11:30:25 22 professional judgment in determining what prescriptions to  
11:30:28 23 fill.

11:30:28 24 Would you agree with that?

11:30:29 25 **A** Yes.

**Deposition of Demetra Ashley**

11:30:31 1 **Q** You understand that pharmacies have sought guidance  
11:30:35 2 from DEA from time to time on how to exercise their  
11:30:42 3 corresponding responsibility?

11:30:42 4 **A** Yes.

11:30:44 5 MS. SWIFT: This will be Exhibit 14.

11:30:46 6 BY MS. SWIFT:

11:30:46 7 **Q** Just to orient you to what this document is, because  
11:30:51 8 it's a couple of things, do you see that the first couple of  
11:30:54 9 pages is a letter to DEA from the National Association of  
11:30:58 10 Chain Drug Stores?

11:31:00 11 **A** Yes.

11:31:01 12 **Q** And then Pages -- starting at Page 3 and the rest of  
11:31:06 13 the document is a response from DEA.

11:31:10 14 Do you see that?

11:31:10 15 **A** Yes.

11:31:12 16 **Q** All right.

11:31:13 17 Starting with the letter from the National Association  
11:31:15 18 of Chain Drug Stores, do you understand that that's a  
11:31:21 19 national organization that -- it is what it sounds like it  
11:31:28 20 is, it's an association of large chain drug stores, like  
11:31:33 21 Walgreens and others?

11:31:34 22 **A** Yes.

11:31:34 23 **Q** The National Association of Chain Drug Stores is  
11:31:38 24 writing to DEA in July of 2019.

11:31:40 25 Do you see that?

**Deposition of Demetra Ashley**

11:31:41 1 **A** Yes.

11:31:41 2 **Q** And feel free to take your time to look at it if you  
11:31:45 3 need to, but my first question is whether you agree with me  
11:31:48 4 that in the second and third paragraph of this letter, the  
11:31:52 5 Chain Drug Stores Group is asking for DEA's views on whether  
11:31:57 6 there are legitimate medical reasons to prescribe so-called  
11:32:02 7 trinity prescriptions, meaning a combination of an opioid, a  
11:32:07 8 benzodiazapine, and a muscle relaxer.

11:32:11 9 Do you see that?

11:32:12 10 **A** Oh, yeah, I do. I see it.

11:32:14 11 **Q** Would you agree with me that that's also known as a  
11:32:18 12 cocktail prescription?

11:32:19 13 **A** Yes, I agree.

11:32:22 14 **Q** Then on the next page of the letter from the Chain  
11:32:25 15 Drug Stores Group, the writer says, "To clear any confusion,  
11:32:34 16 we ask that you provide guidance in writing."

11:32:37 17 Do you see that?

11:32:38 18 **A** Yes.

11:32:39 19 **Q** Okay.

11:32:42 20 And DEA's response follows that letter from the Chain  
11:32:45 21 Drug Stores Group?

11:32:46 22 Do you see that?

11:32:47 23 **A** Yes.

11:32:47 24 **Q** The response is from November of 2019?

11:32:49 25 **A** Yes.

**Deposition of Demetra Ashley**

11:32:53 1       **Q**       The -- at the very bottom of the third paragraph --  
11:32:56 2       and please feel free to take your time to look at whatever  
11:32:59 3       you want to -- but do you see at the bottom of the third  
11:33:02 4       paragraph DEA responds to the Chain Drug Stores Group that,  
11:33:07 5       "The DEA lacks the authority to issue guidelines that  
11:33:11 6       constitute advice relating to the general practice of  
11:33:14 7       medicine"?

11:33:16 8       **A**       Yes.

11:33:16 9       **Q**       Do you agree with that statement, based on your  
11:33:19 10       experience at DEA?

11:33:20 11       **A**       I agree with that statement.

11:33:23 12       **Q**       The next paragraph, second sentence, DEA says to the  
11:33:29 13       National Chain Drug Stores Group, "Federal law and DEA  
11:33:33 14       regulations do not impose a specific quantitative minimum or  
11:33:40 15       maximum limit on the amount of medication that may be  
11:33:44 16       prescribed on a single prescription, or the duration of  
11:33:48 17       treatment intended with the prescribed controlled  
11:33:52 18       substance."

11:33:52 19       Do you see that?

11:33:53 20       **A**       Yes.

11:33:53 21       **Q**       Do you agree with that -- those statements?

11:33:56 22       **A**       I do.

11:33:59 23       **Q**       Do you agree that federal law and DEA regulations do  
11:34:02 24       not impose a limit on the duration of treatment for a  
11:34:06 25       prescribed controlled substance?

**Deposition of Demetra Ashley**

11:34:08 1 **A** I agree with that, yes.

11:34:10 2 **Q** And federal law and DEA regulations also do not impose  
11:34:15 3 any maximum limit on the amount of medication that may be  
11:34:18 4 prescribed on a single prescription.

11:34:20 5 You agree with that as well?

11:34:21 6 **A** I agree with that, yes.

11:34:23 7 **Q** Then the DEA attaches to its letter a Federal Register  
11:34:28 8 notice from 2006 on dispensing controlled substances for the  
11:34:32 9 treatment of pain.

11:34:33 10 Do you see that?

11:34:34 11 **A** Yes.

11:34:35 12 **Q** It's very hard to read in every copy that I could find  
11:34:39 13 attached to the letter. And, so, I have a better copy of  
11:34:45 14 it. I'm going with LL of your box. This will be  
11:34:52 15 Exhibit 15.

11:34:54 16 Do you have it in front of you, Ms. Ashley?

11:34:56 17 **A** Yes.

11:34:57 18 **Q** Okay.

11:35:00 19 Again, it's a Federal Register notice from  
11:35:03 20 September 6th, 2006. It says, "Department of Justice,  
11:35:08 21 DEA -- or Drug Enforcement Administration, 21 CFR Part 1306,  
11:35:13 22 dispensing controlled substances for the treatment of pain"?

11:35:15 23 Did I get all that correctly?

11:35:17 24 **A** Yes.

11:35:18 25 **Q** Okay.

**Deposition of Demetra Ashley**

11:35:19 1 Now, I'd like you to look at Page 3, which has at the  
11:35:30 2 top of it, 52717.

11:35:33 3 Do you see that?

11:35:35 4 **A** Page 3, the 52718?

11:35:39 5 **Q** It's 52717 is what I'm going for.

11:35:43 6 **A** Oh, okay. Yes.

11:35:45 7 **Q** Do you see at the heading at the bottom of the second  
11:35:48 8 column that reads, "The Meaning of the Legitimate Medical  
11:35:50 9 Purpose Requirement"?

11:35:52 10 **A** Yes.

11:35:54 11 **Q** Then if you carry that over to the third column, do  
11:35:58 12 you see where DEA says, "Federal courts have long recognized  
11:36:02 13 that it is not possible to expand on the phrase 'legitimate  
11:36:06 14 medical purpose' in the usual course of professional  
11:36:10 15 practice in a way that will provide definitive guidelines"?

11:36:14 16 **A** Yes, I see that.

11:36:15 17 **Q** Do you agree with that statement, based on your more  
11:36:18 18 than 30 years at DEA?

11:36:19 19 **A** I agree with that statement.

11:36:21 20 **Q** DEA goes on to say, "There are no specific  
11:36:25 21 guidelines."

11:36:26 22 Do you see that in the next paragraph?

11:36:28 23 **A** I do.

11:36:29 24 **Q** Do you agree with that statement?

11:36:31 25 **A** I do.

**Deposition of Demetra Ashley**

11:36:32 1 **Q** Then if you'll turn to the next page. This one is the  
11:36:43 2 page having 52718, and there's a heading, "Comments  
11:36:47 3 Regarding the Use of Opioids."

11:36:48 4 Do you see that?

11:36:49 5 **A** Yes.

11:36:50 6 **Q** Under that heading it says that, "DEA recognizes that  
11:36:56 7 physicians who specialize in the treatment of pain believe  
11:36:58 8 the undertreatment of pain is of paramount concern and a  
11:37:02 9 serious public health problem."

11:37:03 10 Do you see that?

11:37:04 11 **A** Yes. Yes. Yes. I see it.

11:37:07 12 **Q** Okay. Do you agree with that statement?

11:37:14 13 **A** Yes.

11:37:17 14 **Q** And still in that first column -- oh, sorry, on  
11:37:22 15 Page 5. So now I believe we should be on 52719.

11:37:29 16 In the middle of that first column do you see the  
11:37:32 17 first paragraph that says, "First, one cannot provide"?

11:37:35 18 **A** Yes.

11:37:37 19 **Q** It says -- and this is DEA's statement -- "One cannot  
11:37:41 20 provide an exhaustive and foolproof list of do's and don'ts  
11:37:49 21 when it comes to prescribing controlled substances for pain  
11:37:52 22 or any other medical purpose."

11:37:53 23 Do you agree with that statement?

11:37:55 24 **A** Yes, I do.

11:37:58 25 **Q** It goes on to say that, "Each patient's medical



**Deposition of Demetra Ashley**

11:38:01 1 situation is unique and must be evaluated based on the  
11:38:03 2 entirety of the circumstances."

11:38:04 3 Do you agree with that as well?

11:38:05 4 **A** Yes, I do.

11:38:06 5 **Q** Then on the third column of that same page, the first  
11:38:11 6 full paragraph on the page where it says, "DEA recognizes."

11:38:15 7 Do you see that?

11:38:16 8 **A** Yes.

11:38:16 9 **Q** It says, "DEA recognizes that the overwhelming  
11:38:20 10 majority of American physicians who prescribe controlled  
11:38:23 11 substances do so for legitimate medical purposes. In fact,  
11:38:27 12 the overwhelming majority of physicians who prescribe  
11:38:30 13 controlled substances do so in a legitimate manner and will  
11:38:35 14 never warrant scrutiny by federal or state law enforcement  
11:38:38 15 officials."

11:38:38 16 Do you agree with that statement?

11:38:39 17 **A** Yes, I agree with that statement.

11:38:42 18 **Q** In response to questions from doctors, this is the DEA  
11:38:50 19 saying, we're not going to tell doctors what kind of  
11:38:55 20 prescriptions they can and cannot write.

11:38:57 21 Would you agree with that?

11:38:58 22 **A** Yes.

11:38:59 23 **Q** In response to questions from pharmacies, the DEA also  
11:39:03 24 said we're not going to tell pharmacists what prescriptions  
11:39:07 25 they can and can't fill.

**Deposition of Demetra Ashley**

11:39:09 1 Would you agree with that?

11:39:11 2 **A** Can you repeat that? Drug Enforcement Administration  
11:39:13 3 is not going to tell...

11:39:17 4 **Q** Pharmacists what prescriptions they can and can't  
11:39:19 5 fill.

11:39:19 6 **A** That's correct. I mean, I should say I agree.

11:39:22 7 **Q** Ms. Ashley, has the DEA ever imposed limits on the  
11:39:26 8 amount of prescription opioids that may be prescribed or  
11:39:28 9 dispensed for a patient, in your experience?

11:39:32 10 **A** Not that I'm aware of.

11:39:34 11 **Q** In your experience, has Drug Enforcement  
11:39:36 12 Administration ever imposed any limit on the daily dose of a  
11:39:39 13 prescription opioid that may be prescribed or dispensed for  
11:39:42 14 a patient?

11:39:43 15 **A** Not in my experience.

11:39:45 16 **Q** In your experience, has DEA ever imposed any limits on  
11:39:49 17 the strength of a prescription opioid medication that may be  
11:39:52 18 prescribed or dispensed for a patient?

11:39:55 19 **A** Not in my experience.

11:39:56 20 **Q** In your experience, has DEA ever prohibited the  
11:40:00 21 prescribing or dispensing of prescription opioids in  
11:40:04 22 combination with other medications?

11:40:06 23 **A** Not in my experience.

11:40:09 24 **Q** Would you agree with me, Ms. Ashley, that people  
11:40:13 25 suffering from pain should have access to prescription

**Deposition of Demetra Ashley - Cross/Weinberger**

11:40:16 1 opioid medication if a doctor determines that that's an  
11:40:19 2 appropriate treatment?

11:40:20 3 **A** I agree with that.

11:40:23 4 MS. SWIFT: I've marked this one as Exhibit 16  
11:40:26 5 to Ms. Ashley's deposition.

11:40:29 6 BY MS. SWIFT:

11:40:30 7 **Q** Ms. Ashley, do you recognize this letter as one that  
11:40:34 8 you wrote in April of 2017?

11:40:38 9 **A** Yes.

11:40:39 10 **Q** You were responding to concerns from a pain patient;  
11:40:47 11 is that correct?

11:40:49 12 **A** Yes.

11:40:50 13 **Q** Do you understand, based on your experience at the DEA  
11:40:54 14 in this time frame, that pain patients were having a harder  
11:40:58 15 time getting access to pain medication?

11:41:02 16 **A** I was -- yeah, I did -- did learn that, yes.

11:41:07 17 **Q** Pain patients like this one were writing to DEA about  
11:41:13 18 their concerns about getting access to the necessary pain  
11:41:16 19 medication. Is that true?

11:41:17 20 **A** Yes, that's true.

11:41:17 21 CROSS-EXAMINATION OF DEMETRA ASHLEY

11:41:38 22 BY MR. WEINBERGER:

11:41:38 23 **Q** Ms. Ashley, my name is Peter Weinberger, and I'm  
11:41:44 24 privileged to represent the plaintiffs. I have an  
11:41:46 25 opportunity now to ask you questions, and so I'm going to go

**Deposition of Demetra Ashley - Cross/Weinberger**

11:41:55 1 right to it.

11:41:55 2 And by the way, the questions that I'm going to ask  
11:41:58 3 you today, in accordance with the parameters that have been  
11:42:02 4 set by the Department of Justice are about your own personal  
11:42:06 5 knowledge as a long-time employee of the Drug Enforcement  
11:42:10 6 Administration.

11:42:11 7 Based upon your knowledge and experience at the DEA,  
11:42:17 8 is it true that these defendants, Walgreens, CVS, Walmart,  
11:42:24 9 Rite Aid, and Giant Eagle, are required to, quote, provide  
11:42:30 10 effective controls and procedures to guard against the theft  
11:42:34 11 and diversion of controlled substances, end quote?

11:42:39 12 **A** Yes, that's correct.

11:42:39 13 **Q** So what I just asked you about is what's contained in  
11:42:43 14 the federal regulations, which were enacted as a result of  
11:42:50 15 the Controlled Substances Act. And it says, in Section (a),  
11:42:54 16 "All applicants and registrants shall provide effective  
11:42:58 17 controls and procedures to guard against theft and diversion  
11:43:01 18 of controlled substances."

11:43:03 19 So this is the regulation that governs this, correct,  
11:43:08 20 Ms. Ashley?

11:43:09 21 **A** Correct.

11:43:11 22 **Q** Each of these retail pharmacies, in your experience,  
11:43:17 23 should know that controlled substances, like opioid  
11:43:20 24 prescriptions, can be addictive.

11:43:24 25 True?

**Deposition of Demetra Ashley - Cross/Weinberger**

11:43:25 1 **A** Yes, I agree with that.

11:43:26 2 **Q** They should all know that opioid prescription drugs  
11:43:30 3 can often be diverted.

11:43:33 4 True?

11:43:34 5 **A** True, yes.

11:43:35 6 **Q** And by diverted, we mean they can be stolen within the  
11:43:41 7 pharmacies, by pharmacy employees or others, or can be used  
11:43:45 8 by patients or individuals in ways not consistent with a  
11:43:48 9 legitimate medical use.

11:43:49 10 True?

11:43:51 11 **A** Yes.

11:43:51 12 **Q** And if these five retail pharmacy companies have been  
11:43:58 13 registrants for 30 years or more, they should have been well  
11:44:05 14 aware of these risks associated with opioid prescription  
11:44:11 15 medications for that entire period of time.

11:44:14 16 True? Do you agree with that?

11:44:17 17 **A** Yes, I agree with that.

11:44:18 18 **Q** And, frankly, that's why the Controlled Substances Act  
11:44:21 19 was enacted. It was -- its purpose was to set up a closed  
11:44:27 20 system where drug companies, including the defendant  
11:44:35 21 pharmacies, were required to follow the rules to minimize  
11:44:37 22 the risk of misuse and diversion of drugs, like opioid  
11:44:40 23 prescriptions; correct?

11:44:42 24 **A** Correct.

11:44:43 25 **Q** Addiction, misuse, and diversion of opioid

**Deposition of Demetra Ashley - Cross/Weinberger**

11:44:47 1 prescriptions pose a significant risk to the health and  
11:44:55 2 safety of our communities across the nation.

11:44:57 3 Do you agree with that?

11:44:57 4 **A** I agree with that.

11:44:58 5 **Q** Diversion of opioid prescriptions is a danger to the  
11:45:02 6 health and welfare of our cities and counties across the  
11:45:05 7 country.

11:45:06 8 Do you agree with that?

11:45:07 9 **A** I agree with that.

11:45:08 10 **Q** So with respect to your personal knowledge over all  
11:45:12 11 the years that you worked at the DEA, would you agree that  
11:45:15 12 the DEA helps the defendants know the law and regulations  
11:45:19 13 associated with dispensing opioid products?

11:45:24 14 **A** Yes, I agree.

11:45:26 15 **Q** The DEA sends out advisory letters. True?

11:45:30 16 **A** Yes, true.

11:45:31 17 **Q** The DEA holds meetings with these defendant companies  
11:45:35 18 from time to time to explain issues associated with  
11:45:38 19 regulations about dispensing. True?

11:45:42 20 **A** Yes, it's true.

11:45:43 21 **Q** The DEA publishes, in the Federal Register, the  
11:45:49 22 results of enforcement actions brought against companies  
11:45:51 23 that violate the dispensing regulations of the DEA -- of the  
11:45:59 24 Controlled Substances Act?

11:46:00 25 **A** Yes, that's true.

**Deposition of Demetra Ashley - Cross/Weinberger**

11:46:02 1 **Q** With respect to dispensing enforcement actions that  
11:46:05 2 have been brought against CVS and Walgreens and Walmart and  
11:46:11 3 Rite Aid, isn't it true that the DEA publishes  
11:46:18 4 adjudications, information about those enforcement actions?

11:46:22 5 **A** In my personal recollection, yes.

11:46:23 6 **Q** Well, as part of their obligation under a 1301.71 to  
11:46:41 7 provide effective controls to guard against theft and  
11:46:44 8 diversion, would you agree that these defendant pharmacies  
11:46:46 9 corporately have an obligation to develop policies to train  
11:46:49 10 pharmacists to comply with the regulations?

11:46:52 11 **A** Yeah, I agree -- as part of that process, yes.

11:46:56 12 **Q** Would you agree that the defendants are required to  
11:46:58 13 develop and implement systems to provide the necessary tools  
11:47:02 14 for their pharmacists to comply with the CSA regulations?

11:47:06 15 **A** Yes.

11:47:08 16 **Q** Would you agree that the defendants' pharmacist  
11:47:14 17 training and the tools that they provide must be designed to  
11:47:20 18 provide effective controls and procedures to prevent the  
11:47:24 19 theft and diversion of opioids?

11:47:26 20 **A** Yeah, I believe that's an obligation.

11:47:29 21 **Q** Because if the training and the tools used by the  
11:47:34 22 defendant corporations are not adequate, we run the risk of  
11:47:41 23 opioid pills getting into the wrong hands and leading to  
11:47:45 24 diversion; correct?

11:47:46 25 **A** That's correct.

**Deposition of Demetra Ashley - Cross/Weinberger**

11:47:47 1 **Q** And I think we've already -- I think you already agree  
11:47:51 2 with me that diversion is dangerous to the health and safety  
11:47:54 3 of our neighborhoods; correct?

11:47:56 4 **A** That's correct.

11:47:56 5 **Q** And diversion burdens our court systems, our law  
11:47:59 6 enforcement community, and the social fabric of our  
11:48:02 7 communities. Agreed?

11:48:05 8 Do you agree with that?

11:48:06 9 **A** Yes, I agree.

11:48:07 10 **Q** And is it fair to say that this opioid epidemic, from  
11:48:09 11 your knowledge at the DEA, had been going on since early  
11:48:16 12 2000s.

11:48:17 13 The answer is yes; right?

11:48:19 14 **A** It's fair to say that, yes.

11:48:21 15 **Q** Yes.

11:48:22 16 And is it fair to say that any registrant, including  
11:48:25 17 these five defendants, from your experience, knew or should  
11:48:28 18 have known of the raging epidemic in opioid prescription  
11:48:33 19 pills from the early 2000s on?

11:48:37 20 **A** I believe they knew or should have known.

11:48:39 21 **Q** And as registrants and dispensers of prescription  
11:48:49 22 opioid medications, shouldn't the conduct of these  
11:48:52 23 pharmacies have been -- shouldn't they have taken into  
11:48:59 24 effect the fact that there was an ongoing epidemic of  
11:49:05 25 prescription opioid pills in this country?



**Deposition of Demetra Ashley - Cross/Weinberger**

11:49:06 1 **A** That would be my expectation, yes.

11:49:09 2 **Q** And because of the danger and risk of prescription  
11:49:12 3 opioid pills and the -- and its effect on the epidemic,  
11:49:19 4 would you agree that these pharmacy companies should have  
11:49:23 5 been extremely vigilant in ensuring that their employees  
11:49:28 6 complied with the Controlled Substances Act?

11:49:30 7 **A** I believe they should have been vigilant, yes.

11:49:33 8 **Q** You're aware of the CSA regulation that requires the  
11:49:41 9 defendants to store their dispensing data in their own  
11:49:50 10 systems?

11:49:51 11 **A** Yes.

11:49:52 12 **Q** Can we agree, generally -- and we'll get into the red  
11:49:57 13 flag systems a little bit later -- but can we agree,  
11:50:01 14 generally, that many of the red flags associated with either  
11:50:05 15 a prescriber profile or a patient profile company use data  
11:50:11 16 to identify potential red flags?

11:50:14 17 **A** Yes.

11:50:15 18 **Q** And in terms of the pharmacy company's obligation to  
11:50:24 19 establish appropriate controls to guard against diversion,  
11:50:29 20 it would be reasonable to expect the pharmacies to access  
11:50:34 21 their own databases to look for red flags; right?

11:50:39 22 **A** That is reasonable, yes.

11:50:40 23 **Q** And, particularly, if a pharmacy company is being  
11:50:45 24 vigilant in the face of a raging prescriptions opioid pill  
11:50:49 25 epidemic, access to that database of information would be

**Deposition of Demetra Ashley - Cross/Weinberger**

11:50:56 1 important; correct?

11:50:58 2 **A** I agree it would be important, yes.

11:51:00 3 **Q** Is it your understanding, based upon your years of  
11:51:03 4 experience, that a pharmacy and its pharmacists have a  
11:51:07 5 corresponding responsibility, in addition to the  
11:51:12 6 prescriber's responsibility, to fill only opioid  
11:51:15 7 prescriptions that are issued for a legitimate medical  
11:51:17 8 purpose?

11:51:18 9 **A** That is my understanding.

11:51:20 10 **Q** The corresponding responsibility has been described by  
11:51:23 11 the Drug Enforcement Agency, in your experience, as quote,  
11:51:31 12 "the last line of defense to preventing opioid abuse and  
11:51:34 13 diversion."

11:51:36 14 True?

11:51:36 15 **A** That's true.

11:51:36 16 **Q** And by last line of defense, that means -- what is  
11:51:40 17 meant is it's the very last opportunity before the opioid  
11:51:46 18 prescription pills gets into the hands of the patient or  
11:51:50 19 gets on to the streets for the system to ensure that the  
11:51:55 20 prescription is properly dispensed under the laws; correct?

11:52:00 21 **A** It's my personal understanding that that is the last  
11:52:03 22 decision-making before it's turned over to the end user,  
11:52:10 23 correct.

11:52:10 24 **Q** Also known as the last line of defense; correct?

11:52:15 25 **A** Last line of defense.

**Deposition of Demetra Ashley - Cross/Weinberger**

11:52:16 1 **Q** So Exhibit 1 is what Ms. Swift showed you. It's this  
11:52:19 2 PowerPoint that -- where you were a presenter, apparently,  
11:52:23 3 in 2016. And I want to go over just a couple of pages of  
11:52:28 4 it.

11:52:28 5 And you've entitled this "DEA and Pharmacy: Working  
11:52:32 6 Together to Prevent Prescription Drug Abuse."

11:52:37 7 Can we -- can we agree, based on your experience over  
11:52:40 8 your many years at the DEA, that, you know, part of the  
11:52:44 9 job -- of your job was to communicate with DEA's -- I'm  
11:52:48 10 sorry, with pharmacy corporations, like these defendants,  
11:52:51 11 and to cooperate with them and provide them, where  
11:52:55 12 appropriate, proper guidance.

11:52:58 13 True?

11:52:59 14 **A** Yes, that's true.

11:53:06 15 **Q** And that's something that you strove do?

11:53:08 16 **A** Yes, I is did.

11:53:10 17 **Q** I'm interested in the use of the terminology "red  
11:53:14 18 flag," based upon your experience, you know, as a layperson  
11:53:17 19 not in this field.

11:53:19 20 I'm just interested, from your personal understanding,  
11:53:22 21 does red flag mean stop and investigate? Is that what using  
11:53:26 22 that terminology means?

11:53:30 23 **A** It means stop, pay attention, warning, yes.

11:53:33 24 **Q** Let's look at -- are you familiar, as a DEA employee,  
11:53:43 25 of "blue highway," the prescription of the "blue highway"?

**Deposition of Demetra Ashley - Cross/Weinberger**

11:53:48 1 **A** The term is familiar. I see that, yes.

11:53:52 2 **Q** And from your knowledge, Ms. Ashley, at the DEA, was  
11:54:04 3 the DEA aware of the factor that patients were coming from  
11:54:13 4 Ohio, Kentucky, Tennessee, Georgia, going down to Florida,  
11:54:18 5 and getting prescriptions filled and then taking them back  
11:54:22 6 to these other states?

11:54:24 7 **A** I did not know independent of DEA, of my role --

11:54:29 8 **Q** You became --

11:54:30 9 **A** -- at DEA.

11:54:31 10 **Q** You became generally aware of that in your position at  
11:54:36 11 DEA, correct?

11:54:36 12 **A** I became aware of it in my role at DEA, yes.

11:54:38 13 **Q** And did you become aware, as part of your personal  
11:54:43 14 experience at the DEA, that some of this pill migration or  
11:54:50 15 traveling was from pill mills that were being dispensed at  
11:54:56 16 the Walgreens and CVS Pharmacy facilities in Florida?

11:55:00 17 **A** I recall that, yes.

11:55:02 18 **Q** And some of the conduct at those CVS and Walgreens  
11:55:06 19 stores were investigated, and the subject of enforcement  
11:55:12 20 actions brought against those companies by the DEA.

11:55:15 21 Without going into details, isn't that true?

11:55:18 22 **A** I am aware of that, yes.

11:55:19 23 **Q** If you would pull out P-OD-WAG-00248.

11:55:32 24 This is a Settlement Agreement between the federal  
11:55:36 25 government and CVS from 2015. And I just want to -- first

**Deposition of Demetra Ashley - Cross/Weinberger**

11:55:49 1 of all, are you familiar with this Settlement Agreement, the  
11:55:51 2 document itself?

11:55:53 3 **A** I'm familiar with the Settlement Agreement with CVS.

11:55:57 4 **Q** And if you go back to Page 2, Paragraph G, it says,  
11:56:07 5 CVS -- and this is the corporation, CVS; right?

11:56:11 6 **A** Yes.

11:56:12 7 **Q** Not some individual pharmacist; right?

11:56:14 8 **A** Correct.

11:56:15 9 **Q** Does the agreement say that, that CVS is acknowledging  
11:56:19 10 it has a corresponding responsibility?

11:56:21 11 **A** Yes.

11:56:22 12 **Q** Now, let's move to Walgreens for a moment, Ms. Swift's  
11:56:29 13 client.

11:56:29 14 This is the press release from the Department of  
11:56:39 15 Justice.

11:56:39 16 And were you generally familiar, as the -- and  
11:56:43 17 personally knowledgeable about the -- this -- the settlement  
11:56:47 18 of this enforcement action with Walgreens?

11:56:49 19 **A** Yes, personally knowledgeable, yes.

11:56:51 20 **Q** Well, did you -- do you know from your own personal  
11:56:54 21 knowledge that the Department of Justice, in this press  
11:56:59 22 release, had the ability -- or had allowed people who were  
11:57:06 23 reading it the ability to link to the Walgreens memorandum  
11:57:13 24 of agreement?

11:57:15 25 Well, certainly that's what it says on the document,

**Deposition of Demetra Ashley - Cross/Weinberger**

11:57:17 1 right? That there's a link to it; right? And it's in a pdf  
11:57:23 2 form; right?

11:57:24 3 **A** That's what it says, yes.

11:57:25 4 **Q** Ms. Ashley, we talked about the fact that these  
11:57:30 5 pharmacy defendants have a duty to provide tools to their  
11:57:43 6 pharmacists to prevent diversion, generally speaking, under  
11:57:49 7 1301.71; correct?

11:57:52 8 Do you agree with that?

11:57:53 9 **A** Yes.

11:57:53 10 **Q** Do you believe from your experience at the DEA that  
11:57:58 11 that includes pharmacies providing a work environment for  
11:58:04 12 their pharmacists that allows the pharmacists to fulfill  
11:58:07 13 their corresponding responsibility?

11:58:10 14 **A** Yeah, I agree with that.

11:58:11 15 **Q** So that would include not imposing strict and  
11:58:15 16 unreasonable time limits to fill prescriptions so that they  
11:58:20 17 cannot have enough time to investigate red flags?

11:58:25 18 **A** Yeah, that sounds unreasonable.

11:58:27 19 **Q** Not -- and it would include not requiring quotas on  
11:58:31 20 prescriptions filled.

11:58:32 21 True?

11:58:33 22 **A** Yeah, that sounds unreasonable.

11:58:38 23 **Q** It would require adequate staffing of the pharmacy to  
11:58:41 24 allow enough pharmacists at these stores to fulfill their  
11:58:44 25 corresponding responsibility.

**Deposition of Demetra Ashley - Redirect/Swift**

11:58:45 1 True?

11:58:46 2 **A** Yeah, I think that's important.

11:58:48 3 **Q** Ms. Ashley, those are all the questions I have. Thank  
11:58:50 4 you.

11:58:58 5 THE COURT: Okay. That was timed perfectly.

11:59:02 6 MS. SWIFT: Your Honor, there's a little bit  
11:59:03 7 of redirect.

11:59:04 8 THE COURT: Oh, okay. I apologize.

11:59:05 9 MS. SWIFT: Recross.

11:59:06 10 THE COURT: Then we should conclude it.

11:59:08 11 Sorry.

11:59:09 12 MS. SWIFT: Thank you.

11:59:12 13 REDIRECT EXAMINATION OF DEMETRA ASHLEY

11:59:12 14 BY MS. SWIFT:

11:59:12 15 **Q** All right.

11:59:14 16 Ms. Ashley, do you see on the face of Exhibit 10, the  
11:59:17 17 press release from the United States Attorney's Office in  
11:59:19 18 the Southern District of Florida? It says, in the first  
11:59:23 19 paragraph that, "The settlement related to six Walgreens  
11:59:28 20 retail pharmacies in Florida" -- in the first paragraph?

11:59:34 21 **A** Yes, that's what it says.

11:59:35 22 **Q** Ms. Ashley, if you would, pull out Exhibit 2, which is  
11:59:41 23 your PowerPoint from 2013.

11:59:46 24 **A** I have it.

11:59:50 25 **Q** All right.

**Deposition of Demetra Ashley - Redirect/Swift**

11:59:51 1 If you would, turn to Page 34 of your 2013 PowerPoint,  
11:59:57 2 which is the page that -- or one of the pages the  
12:00:01 3 plaintiffs' lawyer asked you about before.

12:00:02 4 Do you remember that?

12:00:04 5 **A** Yes.

12:00:06 6 **Q** Actually, just to lead up to it, let's go back to 36.  
12:00:09 7 I apologize. Just so it will make more sense if we start  
12:00:13 8 with 36.

12:00:15 9 **A** Sure. I have it.

12:00:16 10 **Q** It says, "Georgia Example: Traditional Pain  
12:00:20 11 Management Clinics."

12:00:21 12 Do you see that?

12:00:22 13 **A** I do.

12:00:22 14 **Q** And it says, "In years prior to 2009 and 2010, there  
12:00:26 15 were 15 to 20 legitimate clinics."

12:00:29 16 Do you see that?

12:00:29 17 **A** Yes.

12:00:30 18 **Q** "Almost all owned by physicians, Accept Insurance,  
12:00:34 19 Medicaid, Medicare, et cetera; patients need payments;  
12:00:38 20 follow pain management guidelines; patients get a complete  
12:00:40 21 physical work-up and exam; use physical therapy, other  
12:00:45 22 treatment methods; prescribed drugs usually include  
12:00:50 23 non-narcotics."

12:00:50 24 Do you see all of that?

12:00:51 25 **A** Yes.



**Deposition of Demetra Ashley - Redirect/Swift**

12:00:51 1 **Q** Then if you go back to Page 38, it says, "Now, in  
12:00:59 2 2012 -- approximately 125 rogue clinics owned by  
12:01:04 3 non-physicians, and the owners: Are from another state;  
12:01:08 4 many are convicted felons; usually owned or operated a pain  
12:01:12 5 clinic in another state; have ties to some type of organized  
12:01:17 6 crime."

12:01:18 7 And then in the last bullet, it says, "If from  
12:01:22 8 Florida, left not because of the Florida PMP, but due to new  
12:01:26 9 pain clinic restrictions and no dispensing"?

12:01:28 10 Did I get all that correctly?

12:01:30 11 **A** Yes.

12:01:30 12 **Q** And is that consistent with your understanding from  
12:01:32 13 your 30-plus years at the DEA of what happened with the  
12:01:36 14 expansion of rogue pain clinics in this time frame?

12:01:44 15 **A** Yeah, in general. Yes.

12:01:46 16 **Q** Flip ahead to Page 47, please.

12:01:52 17 This slide has a heading that says, "Utility of the  
12:01:56 18 TDS's: Operation Pill Nation."

12:01:59 19 Do you know what the acronym TDS stands for?

12:02:02 20 **A** Yes.

12:02:02 21 **Q** What does it stand for?

12:02:05 22 **A** Tactical Diversion Squad.

12:02:07 23 **Q** So this says, "Utility of the Tactical Diversion  
12:02:10 24 Squads: Operation Pill Nation."

12:02:13 25 Explain for me, please, if you could, what the

**Deposition of Demetra Ashley - Redirect/Swift**

12:02:15 1 Tactical Diversions Squads were or are?

12:02:18 2 **A** The Tactical Diversion Squads are groups within DEA  
12:02:22 3 that have diversion investigators, special agents, and local  
12:02:27 4 state law enforcement officers, and they work together on  
12:02:32 5 diversion matters.

12:02:33 6 **Q** What is Operation Pill Nation?

12:02:36 7 **A** That was the title given to the initiative for the  
12:02:39 8 Florida investigations.

12:02:42 9 **Q** It says that, "DEA was working with other federal,  
12:02:45 10 state, and local partners to start identifying, targeting  
12:02:49 11 and investigating rogue pain clinics," correct?

12:02:52 12 **A** Correct.

12:02:53 13 **Q** It goes on to say that, "11 tactical diversion squads  
12:03:00 14 from across the United States provided assistance," and that  
12:03:03 15 there were 340 undercover buys from more than 48 clinics and  
12:03:08 16 64 doctors, correct?

12:03:10 17 **A** Correct.

12:03:13 18 **Q** Then if you look at the next slide, slide 48, still  
12:03:17 19 talking about Operation Pill Nation, the DEA's operation in  
12:03:21 20 Florida, it says that there were 21 search warrants executed  
12:03:25 21 at clinics, residences, and other locations in south Florida  
12:03:32 22 and 25 people arrested on various federal and state drug and  
12:03:35 23 money laundering charges, of which five were medical doctors  
12:03:38 24 and five were pain clinic owners.

12:03:41 25 Is that consistent with your understanding of

**Deposition of Demetra Ashley - Redirect/Swift**

12:03:43 1 Operation Pill Nation?

12:03:46 2 **A** Yes.

12:03:50 3 **Q** Exhibit 12 is a statement from Susan Langston, the  
12:03:58 4 diversion program manager at the DEA's Miami Field Division  
12:04:03 5 Office, before the Controlled Substance Standards Committee  
12:04:04 6 of the Florida Board of Pharmacy and the Florida Department  
12:04:06 7 of Health for a public meeting concerning issues with  
12:04:10 8 patients filling prescriptions for controlled substances in  
12:04:13 9 August of 2015, correct?

12:04:15 10 **A** Yes.

12:04:16 11 **Q** In that same paragraph, she goes on to say, "At that  
12:04:20 12 time, most of the narcotic pain pills prescribed by those  
12:04:25 13 pain pill physicians were dispensed directly from the pain  
12:04:28 14 clinics and the involvement of a separate retail pharmacy  
12:04:32 15 was not necessary."

12:04:36 16 Is that true based on your experience at DEA?

12:04:39 17 **A** Yeah. Yes, it is.

12:04:41 18 **Q** Ms. Langston says to the Florida Board of Pharmacy in  
12:04:49 19 this statement that the shift in the Florida law, "The new  
12:04:53 20 law shifted the dispensing of most narcotic painkillers to  
12:04:57 21 actual pharmacies. The shift heightened pharmacists'  
12:05:02 22 responsibilities and they were suddenly faced with  
12:05:04 23 circumstances many never had dealt with before."

12:05:07 24 And my only question is whether you know that to be  
12:05:09 25 true.

**Deposition of Demetra Ashley - Redirect/Swift**

12:05:09 1 **A** Yeah. Yes, I think that the legislation did change  
12:05:15 2 things, yes.

12:05:16 3 **Q** It goes on to say in the very next paragraph, "We  
12:05:18 4 recognize that the vast majority of controlled substance  
12:05:21 5 prescriptions are written by highly trained and ethical  
12:05:24 6 medical professionals who are treating legitimate medical  
12:05:27 7 conditions."

12:05:28 8 Do you agree with that?

12:05:29 9 **A** I agree with that.

12:05:30 10 **Q** She goes on, "We also recognize that the vast majority  
12:05:34 11 of controlled substance prescriptions written by doctors are  
12:05:37 12 for legitimate medical purposes and are issued in the usual  
12:05:41 13 course of professional practice. A great deal of the time a  
12:05:44 14 red flag at a pharmacy can easily be explained, and once it  
12:05:48 15 is resolved, there should be no problem filling that  
12:05:50 16 prescription."

12:05:50 17 Do you agree with that?

12:05:51 18 **A** Yeah, I agree with that.

12:05:54 19 **Q** Ms. Langston says, "On behalf of DEA, although we ask  
12:05:58 20 pharmacists to be on the look-out for suspicious activities  
12:06:02 21 that may indicate drug abuse and diversion, we are not  
12:06:04 22 asking pharmacists to be medical doctors."

12:06:06 23 Do you agree with that?

12:06:07 24 **A** I agree with that.

12:06:10 25 **Q** Ms. Ashley, do you have any personal knowledge of the

**Deposition of Demetra Ashley - Redirect/Swift**

12:06:13 1 dispensing systems used by Walgreens, CVS, Walmart, Rite  
12:06:19 2 Aid, or Giant Eagle pharmacies?

12:06:23 3 **A** Do you mean their platform for prescriptions?

12:06:26 4 **Q** Yes.

12:06:27 5 **A** No.

12:06:28 6 **Q** Do you have any personal knowledge about what those  
12:06:30 7 pharmacies do with the dispensing data that exists in those  
12:06:34 8 systems?

12:06:38 9 **A** Generally, but no. I mean, in general, for DEA  
12:06:42 10 purposes, I do. The storage part of it, you mean?

12:06:45 11 **Q** Well, what general knowledge do you have about what  
12:06:49 12 pharmacies do with the data in their systems?

12:06:51 13 **A** The only general knowledge I have is that they store  
12:06:53 14 it and they have it available for DEA when we need it.

12:06:56 15 **Q** And they can provide records to DEA upon request? Is  
12:06:59 16 that what you're getting at?

12:07:01 17 **A** Yes.

12:07:02 18 **Q** Do you have any other personal knowledge about what  
12:07:05 19 pharmacies do with the dispensing data in their systems?

12:07:11 20 **A** I don't.

12:07:13 21 **Q** Would you agree that most people who take prescription  
12:07:16 22 opioids pursuant to a doctor's prescription never use  
12:07:20 23 heroin?

12:07:22 24 **A** Yeah, I would agree with that.

12:07:24 25 **Q** The Corresponding Responsibility Regulation, that's

**Deposition of Demetra Ashley - Redirect/Swift**

12:07:28 1 1306.04(a), correct?

12:07:32 2 **A** Yes.

12:07:33 3 **Q** The regulation states that, "The responsibility for  
12:07:36 4 the proper prescribing and dispensing of controlled  
12:07:41 5 substances is upon the prescribing practitioner."

12:07:43 6 That's the first half of that sentence; correct?

12:07:45 7 **A** Correct.

12:07:46 8 **Q** It goes on to say, "But a corresponding responsibility  
12:07:51 9 rests with the pharmacist who fills the prescription,"  
12:07:54 10 correct?

12:07:54 11 **A** Correct.

12:07:57 12 **Q** Then it goes on to say, "The person knowingly filling  
12:08:02 13 such a purported prescription," it says, "The person  
12:08:05 14 knowingly doing that is subject to penalties" for that.

12:08:09 15 Do you agree with that?

12:08:10 16 **A** Yes, there has to be knowledge, yes.

12:08:12 17 **Q** Would you agree with me, Ms. Ashley, that pharmacies  
12:08:15 18 generally try to work with the DEA to ensure that they have  
12:08:17 19 effective controls to prevent diversion?

12:08:19 20 **A** I agree with that.

12:08:20 21 **Q** Would you agree with me that pharmacies generally try  
12:08:22 22 to work with the DEA to ensure that they are complying with  
12:08:26 23 the law?

12:08:27 24 **A** I agree with that.

12:08:28 25 **Q** In your experience, do pharmacies try their best to

**Deposition of Demetra Ashley - Recross/Weinberger**

12:08:33 1 prevent the diversion of prescription opioids?

12:08:36 2 **A** In general, yes.

12:08:40 3 MS. SWIFT: Your Honor, I think there's  
12:08:42 4 something like five minutes left. If you want to take a  
12:08:45 5 break now or finish it up.

12:08:46 6 THE COURT: Well, all right. I guess we  
12:08:48 7 should -- we should probably --

12:08:52 8 MR. WEINBERGER: It's two and a half matters.

12:08:54 9 THE COURT: Well, I guess -- because I've got  
12:08:56 10 two criminal matters, but let's finish this up, please.

12:09:00 11 RECROSS-EXAMINATION OF DEMETRA ASHLEY

12:09:00 12 BY MR. WEINBERGER:

12:09:01 13 **Q** Ms. Ashley, a couple of follow-up questions after  
12:09:04 14 Ms. Swift's redirect.

12:09:06 15 And then, finally, you were asked by Ms. Swift to go  
12:09:11 16 back to the Exhibit 10, our Exhibit 10, Plaintiffs'  
12:09:21 17 Exhibit 10, which is the press release from the Department  
12:09:27 18 of Justice regarding the Walgreens settlement.

12:09:32 19 And she said -- she said, "Well, isn't it true,  
12:09:36 20 Ms. Ashley, that this was limited to their conduct in  
12:09:38 21 Florida." Well, you know, once again, let's take a look at  
12:09:46 22 the entire document and see if what she asked you about is  
12:09:50 23 actually correct.

12:09:51 24 The second -- first paragraph, the second -- the very  
12:09:53 25 last sentence in the first paragraph says, "The settlement

**Deposition of Demetra Ashley - Redirect/Swift**

12:09:58 1 further resolves open civil investigations in the District  
12:10:01 2 of Colorado, the Eastern District of Michigan, and the  
12:10:05 3 Eastern District of New York, as well as civil  
12:10:08 4 investigations by DEA field offices nationwide, pursuant to  
12:10:14 5 the Controlled Substances Act."

12:10:15 6 Have I read that correctly?

12:10:17 7 Well, so, I've read that correctly; correct?

12:10:20 8 **A** Yes, you read that correctly.

12:10:20 9 REDIRECT EXAMINATION OF DEMETRA ASHLEY

12:10:21 10 BY MS. SWIFT:

12:10:21 11 **Q** Ms. Ashley, do you see the first full paragraph on  
12:10:23 12 Page 2 of Exhibit 10?

12:10:29 13 **A** Page 2, first full paragraph. Yes, I do.

12:10:31 14 **Q** It says, "The Settlement Agreement covers conduct that  
12:10:34 15 was the subject of DEA's administrative actions and the U.S.  
12:10:40 16 Attorney's Office civil penalty investigation."

12:10:41 17 Do you see that?

12:10:42 18 **A** I do.

12:10:43 19 **Q** More specifically, the settlement covers allegations  
12:10:46 20 against Walgreens Jupiter Distribution Center and six  
12:10:50 21 Walgreens retail pharmacies; correct?

12:10:53 22 **A** That's what it says, yes.

12:10:54 23 **Q** Would you agree with me that DEA's efforts through  
12:11:00 24 Operation Pill Mill Nation curtailed diversion by many, many  
12:11:05 25 rogue pain clinics and pill mills in Florida?



12:11:10 1 **A** I agree with that.

12:11:16 2 THE COURT: Okay. Thanks for going a little  
12:11:20 3 longer. We'll recess till 1:15.

12:11:25 4 Usual admonitions. And then we'll pick up with  
12:11:30 5 another defense witness.

12:11:31 6 Have a good lunch.

12:11:32 7 (Jury excused from courtroom.)

12:12:01 8 (Recess was taken from 12:12 p.m. till 1:22 p.m.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

01:21:55 1 Monday Session, November 8, 2021, at 1:22 P.M.

01:21:55 2 COURTROOM DEPUTY: All rise.

01:23:19 3 (Jury returned to courtroom.)

01:23:39 4 THE COURT: Okay. Please be seated.

01:23:42 5 I apologize for the delay. This was on me. I had two  
01:23:47 6 complicated criminal matters to take care of during the noon  
01:23:50 7 hour.

01:23:50 8 So, Mr. Majoras, you may call your next witness,  
01:23:52 9 please.

01:23:53 10 MR. MAJORAS: Thank you, Your Honor.

01:23:55 11 John Majoras for Walmart. Good afternoon, folks.

01:23:58 12 I'd like to call to the stand Lori Militello.

01:24:22 13 THE COURT: Good afternoon, Ms. Militello. If  
01:24:24 14 you could just raise your right hand, please.

01:24:26 15 Do you swear or affirm that the testimony you are  
01:24:28 16 about to give will be the truth, the whole truth, and  
01:24:30 17 nothing but the truth under pain and penalty of perjury?

01:24:33 18 THE WITNESS: I do.

01:24:34 19 THE COURT: Thank you.

01:24:34 20 Please be seated, and you may remove your mask while  
01:24:38 21 testifying, please.

01:24:38 22 THE WITNESS: Thank you.

01:24:41 23 THE COURT: You may proceed, Mr. Majoras.

01:24:45 24 MR. MAJORAS: Thank you, Your Honor.

**Militello - Direct/Majoras**

01:24:46 1 DIRECT EXAMINATION OF LORI MILITELLO

01:24:46 2 BY MR. MAJORAS:

01:24:46 3 **Q** Good afternoon, Ms. Militello.

01:24:47 4 **A** Good afternoon.

01:24:47 5 **Q** Thank you for joining us. Why don't you introduce  
01:24:49 6 yourself to the jury, please.

01:24:50 7 **A** My name is Lori Militello. I am a pharmacist for  
01:24:55 8 25 years and worked with Walmart 23 of those.

01:24:59 9 **Q** When did you get out of pharmacy school?

01:25:01 10 **A** I graduated in 1994 with my bachelor's of science in  
01:25:07 11 pharmacy.

01:25:08 12 **Q** And when you graduated, we've heard quite a bit about  
01:25:12 13 pharmacy school already, but when you graduated, did you  
01:25:15 14 have to do some clinical work before becoming licensed?

01:25:22 15 **A** Yes. We had to do internships on our own and also we  
01:25:26 16 did externship rotations, and we called them clerk ship  
01:25:30 17 rotations through college, through university.

01:25:33 18 **Q** And where did you do the rotations?

01:25:35 19 **A** The rotations themselves or -- they were at some  
01:25:36 20 independent pharmacies in the Toledo area, and also I did it  
01:25:41 21 at the local hospital, Fremont Memorial, where I'm from. I  
01:25:47 22 did a rotation there, and then I also did one at Toledo  
01:25:51 23 hospital.

01:25:51 24 **Q** You said you're from Fremont?

01:25:52 25 **A** From Fremont.

**Militello - Direct/Majoras**

01:25:53 1 **Q** That's sort of Sandusky area?

01:25:56 2 **A** Yeah, kind of right between here and Toledo.

01:25:59 3 **Q** Okay. And I'm sorry. Where did you go to school?

01:26:01 4 **A** I went to the University of Toledo.

01:26:03 5 **Q** And you're not the only pharmacist in your family, are

01:26:06 6 you?

01:26:06 7 **A** I am not the only pharmacist. My husband is a

01:26:08 8 pharmacist. My brother is a pharmacist. My brother-in-law,

01:26:12 9 my husband's brother, is a pharmacist also.

01:26:15 10 **Q** Did you meet your husband in pharmacy school?

01:26:17 11 **A** I met him in high school.

01:26:19 12 **Q** Oh, so you both decided to go to pharmacy school?

01:26:21 13 **A** We did, yes.

01:26:22 14 **Q** What was your decision process? What made you want to

01:26:24 15 become a pharmacist?

01:26:25 16 **A** At the time, I was in high school, I was actually

01:26:28 17 going to try to be a physical therapist, and I had actually

01:26:33 18 a career day where a pharmacist came in and spoke and

01:26:37 19 between her testimony of what a great job she thought it was

01:26:41 20 and what a fabulous experience she was having, and my

01:26:45 21 husband pursuing it at the time, my boyfriend, it was

01:26:49 22 something that I just thought would be a good fit for me.

01:26:54 23 **Q** So you both became pharmacists out of school at

01:26:59 24 Toledo?

01:27:00 25 **A** That is correct.

**Militello - Direct/Majoras**

01:27:00 1 Q And did you receive any further education beyond that?

01:27:03 2 A I did not. I got my bachelor's and then I got my  
01:27:06 3 pharmacy license and started practicing.

01:27:08 4 Q How about your husband?

01:27:08 5 A My husband went on to get his doctorate in pharmacy,  
01:27:13 6 so it was at that time, an additional two years plus a year  
01:27:16 7 of residency. And so at that time, I worked while helping  
01:27:20 8 him get through the rest of his doctorate.

01:27:22 9 Q Do you have any kids?

01:27:23 10 A We have two sons, 23 and 21, both at Ohio State.

01:27:28 11 Q My kids are older than that and I still refer to them  
01:27:32 12 as kids so I hope you don't mind.

01:27:34 13 A Yes.

01:27:35 14 Q What are they studying at Ohio State?

01:27:36 15 A My oldest is a second-year dental student and my  
01:27:39 16 youngest is graduating this year in environmental  
01:27:42 17 engineering.

01:27:43 18 Q Where do you and your husband live today?

01:27:45 19 A Today we live in Lakewood.

01:27:46 20 Q Just west of here?

01:27:47 21 A Just west, yes.

01:27:48 22 Q And where are you currently working as a Walmart  
01:27:52 23 pharmacist?

01:27:53 24 A Currently, I work at the Walmart Pharmacy in Eastlake.

01:28:02 25 Q So how long have you been a Walmart pharmacist?

**Militello - Direct/Majoras**

01:28:02 1 **A** I have been a Walmart pharmacist since right around,  
01:28:04 2 since 1996 is when I started, December of '96.

01:28:06 3 **Q** I shorted you a couple years.

01:28:08 4 **A** You did.

01:28:08 5 **Q** My apologies.

01:28:10 6 **A** That's okay.

01:28:11 7 **Q** It seems like 30.

01:28:12 8 **A** Yeah. Exactly. Yeah.

01:28:13 9 **Q** Take us, if you would, through sort of the history,  
01:28:18 10 not necessarily in great detail but generally within Ohio  
01:28:20 11 where you've worked in Walmart stores as a pharmacist.

01:28:23 12 **A** In Walmart stores, I started out in Lima, Ohio, which  
01:28:27 13 is on the western side of the state.

01:28:29 14 While I was there, I traveled between -- I worked  
01:28:33 15 generally at the Lima, Walmart but also traveled to  
01:28:38 16 Van Wert, Ottawa, Celina.

01:28:41 17 While I was there, I worked in those varies areas.  
01:28:43 18 When we moved to Cleveland, we had friends from pharmacy  
01:28:47 19 school that were connected to the Walmart here in Eastlake.  
01:28:51 20 And that is how I started working at the Eastlake store.  
01:28:55 21 But in my time period up here, I've worked at several  
01:29:00 22 stores, Mentor, Madison, Macedonia, Great -- Great Northern,  
01:29:05 23 North Olmsted, Elyria, Cleveland, kind of Medina, all over.

01:29:14 24 **Q** So if you were to identify a particular Walmart store  
01:29:17 25 where you spent most of your time, where would that be?

**Militello - Direct/Majoras**

01:29:19 1 **A** It would be Eastlake.

01:29:21 2 **Q** And Eastlake is east of here, just really right on the  
01:29:25 3 Lake border?

01:29:26 4 **A** Yeah, a straight shot east.

01:29:28 5 **Q** Just outside of Euclid maybe?

01:29:31 6 **A** Yes.

01:29:31 7 **Q** And you mentioned a couple of other stores, Madison  
01:29:34 8 and Mentor. Those are both in Lake County; is that right?

01:29:36 9 **A** That's correct.

01:29:40 10 **Q** Where does your husband work? Is he still a  
01:29:42 11 pharmacist?

01:29:42 12 **A** My husband is a clinical pharmacist. He's down at the  
01:29:46 13 Cleveland Clinic.

01:29:54 14 **Q** I'd like to talk a little more about the Eastlake  
01:29:57 15 store if we could.

01:29:58 16 Could you describe for us the community that the  
01:30:00 17 Eastlake store is in?

01:30:01 18 **A** The Eastlake store is in a kind of medium -- I would  
01:30:09 19 say. . . mid-class neighborhood. A lot of blue collar  
01:30:13 20 working folks. You know, a pretty tight-knit community, I  
01:30:20 21 would say.

01:30:20 22 **Q** What street in particular is it on in east -- in  
01:30:22 23 Eastlake?

01:30:23 24 **A** The Walmart pharmacy is on Vine Street.

01:30:26 25 **Q** I'd like to get some understanding -- I'd like you to

**Militello - Direct/Majoras**

01:30:29 1 give the jury some understanding about as a pharmacist, how  
01:30:32 2 you have gotten to know your patients and the community.

01:30:36 3 **A** Well, it really started as soon as I started there.  
01:30:39 4 The pharmacist that I did work with was really very outgoing  
01:30:46 5 and very personal with all of his patients, and he kind of  
01:30:50 6 just mentored me into that same type of mindset. So I'm  
01:30:55 7 very -- I like to be one-on-one with my patients.

01:30:58 8 I know very many of them by name and situation, and so  
01:31:04 9 I've always felt like I have a really good relationship with  
01:31:09 10 the people that I serve in the community.

01:31:11 11 **Q** And how do you learn that over time if you're  
01:31:14 12 essentially filling prescriptions?

01:31:16 13 **A** Just in talking to the people. It's not always about  
01:31:19 14 medications. Sometimes it's about life, other than that.  
01:31:23 15 So I just try to touch base with them on, you know, all  
01:31:27 16 different aspects as I'm, you know, talking to them maybe  
01:31:31 17 about medications also.

01:31:33 18 **Q** So I'd like to get a little bit of a better sense of  
01:31:36 19 how the pharmacy at Walmart looks in case someone hasn't  
01:31:39 20 been there.

01:31:40 21 First it -- so the pharmacy is within a much larger  
01:31:45 22 Walmart store; is that right?

01:31:47 23 **A** Yes, very much.

01:31:47 24 **Q** If I were to walk into a Walmart, would I find the  
01:31:51 25 pharmacy?



**Militello - Direct/Majoras**

01:31:51 1 **A** At this point, we have a special set of doors labeled  
01:31:54 2 pharmacy doors. So we're right inside those doors to the  
01:31:57 3 right, so right inside the main doors.

01:31:59 4 **Q** So right up near the front of the store?

01:32:00 5 **A** That's correct.

01:32:01 6 **Q** Who else works in the pharmacy with you as a -- you're  
01:32:04 7 a pharmacist. Who else is up in the pharmacy with you?

01:32:06 8 **A** Sometimes there is an overlapping pharmacist and we  
01:32:11 9 generally always have at least two technicians usually and  
01:32:17 10 potentially some cashiers as well.

01:32:19 11 So sometimes we have five technicians in a day, but  
01:32:22 12 there's usually a small -- at least a small group of us back  
01:32:26 13 there.

01:32:26 14 **Q** And what is a tech?

01:32:28 15 **A** A technician is at this point somebody who has been  
01:32:31 16 certified through the State Board of Pharmacy to work in the  
01:32:35 17 pharmacy, count medications, some of them are able to  
01:32:40 18 immunize now, do basic screenings, that kind of thing.

01:32:44 19 **Q** How many pharmacists are typically in the store at any  
01:32:47 20 given time?

01:32:49 21 **A** There's always one, obviously. Sometimes there's some  
01:32:53 22 overlap from anywhere to, I don't know, an hour to  
01:32:58 23 four hours.

01:33:01 24 **Q** In terms of the people or the person you report to,  
01:33:07 25 who do you report to? Is there a title or a person that you

**Militello - Direct/Majoras**

01:33:10 1 would report to?

01:33:11 2 **A** My direct report is to my pharmacy manager.

01:33:14 3 **Q** And does the pharmacy manager have responsibilities  
01:33:16 4 outside the pharmacy itself?

01:33:21 5 **A** I mean, on -- yeah. They have things that they are  
01:33:24 6 required to do that maybe don't deal with the day-to-day  
01:33:28 7 business of the pharmacy, so there's certain things, you  
01:33:34 8 know, they have to do at a managing level that maybe doesn't  
01:33:37 9 have to do with filling prescriptions.

01:33:38 10 **Q** And is there a separate store manager at the Walmart  
01:33:41 11 in Eastlake?

01:33:42 12 **A** Yeah, there is a store manager.

01:33:44 13 **Q** So if you were to describe what the difference between  
01:33:46 14 being a store manager versus the pharmacy manager?

01:33:48 15 **A** The pharmacy manager is independently over the  
01:33:51 16 pharmacy. The store manager doesn't necessarily have any  
01:33:54 17 jurisdiction over the pharmacy.

01:33:56 18 **Q** Do you report at all to the store manager?

01:33:58 19 **A** I do not.

01:34:00 20 **Q** We've had a chance during the number of weeks that  
01:34:02 21 we've been here to meet some of the other folks from  
01:34:06 22 Walmart, including some colleagues who started as  
01:34:07 23 pharmacists and then moved into field management or  
01:34:11 24 headquarters.

01:34:12 25 **A** Um-hmm.

**Militello - Direct/Majoras**

01:34:12 1 Q You've been a pharmacist your entire career; right?

01:34:14 2 A That is correct.

01:34:15 3 Q What took you on that path as opposed to some other  
01:34:18 4 path at Walmart?

01:34:19 5 A Between raising my children, I mean, it was a job  
01:34:24 6 where I was able to work a couple days a week easily and  
01:34:29 7 still be able to be home with my kids. It was also  
01:34:34 8 something I wanted to be in the store with -- working with  
01:34:39 9 the public and the community and not necessarily kind of  
01:34:43 10 working in a home office or a management type position.

01:34:47 11 Q So looking back over that 25 years, have you enjoyed  
01:34:50 12 being a pharmacist?

01:34:51 13 A I've enjoyed it.

01:34:54 14 Q Why is that?

01:34:54 15 A I've met a lot of really great people, people that I  
01:34:57 16 felt counted on me, and so it's been a fulfilling career.

01:35:03 17 Q In fact, if you weren't here today, where would you  
01:35:05 18 be?

01:35:05 19 A I'd be at work.

01:35:07 20 Q One of the things that I'd like to do with you if you  
01:35:10 21 could is I'd like to talk a little bit about the layout of  
01:35:17 22 the pharmacy itself. We haven't heard much about that  
01:35:20 23 today.

01:35:20 24 And in preparing for your testimony, you and I helped  
01:35:23 25 put together a slide to help you do that; is that right?

**Militello - Direct/Majoras**

01:35:25 1 **A** That's correct.

01:35:26 2 **Q** And if I put that up on the screen now, which is  
01:35:30 3 DEM -- well, I may have the wrong title. By the way, Ms.  
01:35:34 4 Militello, you have a binder in front of you with documents  
01:35:36 5 that I may ask you to take a look at. But do you see the  
01:35:41 6 screen well enough?

01:35:42 7 **A** I see the screen.

01:35:43 8 **Q** Okay.

01:35:44 9 So it -- what -- just generally, what is it that  
01:35:47 10 you're showing here in this diagram?

01:35:50 11 **A** It's just the basic layout of the pharmacy as far as  
01:35:55 12 where we interact with the public and where we are kind of  
01:35:59 13 doing our prescription filling and checking towards the back  
01:36:03 14 of the pharmacy.

01:36:05 15 **Q** Let me -- maybe we can walk through a little bit of a  
01:36:08 16 situation where if a -- someone drops off a prescription and  
01:36:11 17 then how it kind of works through the pharmacy.

01:36:13 18 **A** Um-hmm.

01:36:14 19 **Q** Before doing that, though, does Walmart have a  
01:36:21 20 drivethrough at it's pharmacy?

01:36:23 21 **A** Some do, we do not.

01:36:24 22 **Q** So if someone's picking something up at your pharmacy  
01:36:27 23 or dropping it, is it in person?

01:36:29 24 **A** It is in person if they're dropping off a hard copy  
01:36:34 25 prescription, but the doctor very commonly, now they send it

**Militello - Direct/Majoras**

01:36:36 1 over the computer in what we call an e-script. So that's  
01:36:39 2 very common now as well.

01:36:40 3 **Q** So in particular, I'd like to ask you some questions  
01:36:42 4 about some of the security features at the pharmacy.

01:36:44 5 Are you familiar with those?

01:36:45 6 **A** Yes.

01:36:45 7 **Q** So let's go first to that door on the front left, the  
01:36:49 8 one with the stop sign on it and --

01:36:51 9 **A** Yes.

01:36:51 10 **Q** And -- it looks like an old lock. What security  
01:36:55 11 features are involved with that door?

01:36:56 12 **A** At the door, that's a dead bolt and a knob lock that  
01:37:02 13 is present there so that -- and that shuts automatically so  
01:37:06 14 that only pharmacy personnel with keys, which is a  
01:37:10 15 pharmacist, can enter that door.

01:37:11 16 **Q** So only the pharmacist has keys?

01:37:13 17 **A** Yes.

01:37:14 18 **Q** Do you carry it on you?

01:37:16 19 **A** I do, on my key chain.

01:37:18 20 **Q** Do you have a key right now?

01:37:19 21 **A** I do.

01:37:20 22 **Q** Okay.

01:37:21 23 So then to the right of that, as we're looking at it,  
01:37:25 24 there are two, looks like windows with drop-offs?

01:37:30 25 **A** That is correct.

**Militello - Direct/Majoras**

01:37:31 1 **Q** And what happens there?

01:37:32 2 **A** Drop off is where a customer that does have a  
01:37:36 3 prescription or refill, say they sometimes bring in their  
01:37:38 4 bottles for refills, that's where they would stop and talk  
01:37:41 5 to usually a technician there, sometimes a pharmacist, and  
01:37:48 6 get that process of prescription filling started there.

01:37:51 7 **Q** And on the door itself, we have a stop sign there. Is  
01:37:54 8 there literally a stop sign on the door at the pharmacy?

01:37:56 9 **A** Yes, there is literally a stop sign. Yes.

01:37:58 10 **Q** Looking again across the front, there are two windows  
01:38:02 11 that say "consultation." What happens at those windows?

01:38:06 12 **A** Those are windows where if a person has a random  
01:38:13 13 question, maybe about something that's out front or over the  
01:38:15 14 counter, they can stop there and we will go over there to  
01:38:18 15 talk with them. Also, a patient that is picking up a  
01:38:21 16 medication that is new to them or something that we need to  
01:38:25 17 talk to them about is directed to that window so that we can  
01:38:29 18 have a conversation.

01:38:31 19 **Q** If you look around inside the pharmacy on the walls,  
01:38:38 20 there are, looks like sort of black ovals on the walls in a  
01:38:41 21 couple different places.

01:38:43 22 **A** Yes.

01:38:43 23 **Q** What are those?

01:38:43 24 **A** Those are security cameras.

01:38:45 25 **Q** And are they throughout the pharmacy the way this

**Militello - Direct/Majoras**

01:38:49 1 drawing depicts them?

01:38:50 2 **A** They're throughout the pharmacy on the walls, also on  
01:38:53 3 the ceiling.

01:38:54 4 **Q** How many do you have on the ceiling?

01:38:58 5 **A** I can think of two for sure.

01:39:01 6 **Q** So let's go -- let's go back through the pharmacist.

01:39:04 7 I think the person in the white coat, is that the  
01:39:07 8 pharmacist?

01:39:08 9 **A** That would represent a pharmacist, I think, yes.

01:39:10 10 **Q** Is that where you spend most of your time?

01:39:12 11 **A** I spend some of my time there, yes, certainly.

01:39:14 12 **Q** So what's a pharmacist bench?

01:39:17 13 **A** We consider the bench kind of where all the -- not the  
01:39:26 14 filling necessarily but the checking of prescriptions and  
01:39:30 15 bagging them for the front takes place.

01:39:33 16 **Q** Is that just a traditional term that's used?

01:39:36 17 **A** It is.

01:39:37 18 **Q** For a pharmacist?

01:39:38 19 **A** Yes.

01:39:39 20 **Q** So we often talk about a Judge on a bench. You've got  
01:39:43 21 your own bench in the pharmacy?

01:39:44 22 **A** Right. Right.

01:39:45 23 If we're talking about the pharmacist being on the  
01:39:47 24 bench, it usually means that they are working in the filling  
01:39:49 25 process of the pharmacy for that day.

**Militello - Direct/Majoras**

01:39:51 1 Q So you said that the pharmacist has the key to the  
01:39:54 2 pharmacy. What if the pharmacist has to leave the pharmacy?

01:39:57 3 A If the pharmacist has to leave, then the pharmacy is  
01:40:00 4 cleared out and locked.

01:40:03 5 Q So if you had to run to your car to pick something up  
01:40:06 6 during the middle of the day?

01:40:07 7 A Yes.

01:40:07 8 Q What would happen?

01:40:08 9 A I would clear everybody out, lock the doors, and go  
01:40:12 10 get my item.

01:40:14 11 Q To the far right to the front, there's the -- there's  
01:40:17 12 a steel shutter. What is that showing us?

01:40:19 13 A When we close at night or for lunch, that shutter is  
01:40:26 14 directly behind the cash registers but in front of where we  
01:40:30 15 store any filled prescriptions for pickup. So that comes  
01:40:35 16 down to shutter that area off so no one can gain access.

01:40:39 17 Q So if I'm -- if I'm at the Walmart pharmacy in the  
01:40:42 18 middle of the afternoon and the shutters are down, I'm  
01:40:45 19 guessing the pharmacist's phone was in the car or something  
01:40:48 20 like that?

01:40:48 21 A Either that, or -- or lunch, yeah.

01:40:52 22 Q Okay.

01:40:52 23 So when you leave, everything shuts down?

01:40:54 24 A Yes.

01:40:55 25 Q Why is that?



**Militello - Direct/Majoras**

01:40:56 1 **A** That's to guarantee security of the pharmacy and  
01:41:01 2 what's in it.

01:41:02 3 **Q** All right.

01:41:02 4 Looking to the back left wall, it looks like you don't  
01:41:05 5 have to shut down the pharmacy if you need to use the  
01:41:08 6 restroom. Is that fair?

01:41:08 7 **A** That is fair.

01:41:09 8 **Q** Is that the only access to the restroom point that the  
01:41:11 9 pharmacy and the pharmacy personnel are able to use?

01:41:13 10 **A** That is the only restroom, right. That's the only way  
01:41:18 11 in right there.

01:41:19 12 **Q** So looking back in some of the other items in our  
01:41:22 13 drawing here, there are four shelves in the back. What  
01:41:25 14 are -- what are on those four shelves?

01:41:27 15 **A** Those are what we call bays, in pharmacy term. So  
01:41:33 16 those contain the stock bottles of medications that we are  
01:41:36 17 going to be using to fill prescriptions.

01:41:39 18 **Q** So if you need to go pick something up to transfer  
01:41:42 19 into a smaller bottle, that's where you start?

01:41:45 20 **A** That's where we start.

01:41:46 21 **Q** And at the pharmacist bench, we have -- we still have  
01:41:50 22 some computers on there.

01:41:52 23 **A** Right.

01:41:52 24 **Q** We've had some testimony already about Connexus.  
01:41:57 25 You're familiar with Connexus?

**Militello - Direct/Majoras**

01:41:58 1 **A** Yes.

01:41:59 2 **Q** That's the Walmart pharmacy computer system?

01:42:02 3 **A** Software, yes.

01:42:03 4 **Q** How often are you using Connexus on a daily basis?

01:42:06 5 **A** All day, every workday.

01:42:08 6 **Q** And so they're handy for your use when you're at the  
01:42:11 7 pharmacist bench?

01:42:11 8 **A** Absolutely.

01:42:12 9 **Q** Are there other folks in the pharmacy who are using  
01:42:15 10 the computer system?

01:42:16 11 **A** I'm sorry. Could you repeat?

01:42:17 12 **Q** Sure.

01:42:18 13 Are there other folks working in the pharmacy who  
01:42:20 14 might be using the computer system?

01:42:21 15 **A** Yes.

01:42:22 16 Technicians and on occasion, the cashiers will use the  
01:42:27 17 system as well.

01:42:29 18 **Q** Are there aspects of the computer system that only you  
01:42:33 19 can enter?

01:42:35 20 **A** To enter into Connexus, you have to put a username and  
01:42:39 21 password to gain access.

01:42:40 22 **Q** And who has usernames and passwords?

01:42:43 23 **A** Everybody has their own individual.

01:42:45 24 **Q** And are there some aspects, though, of the Connexus  
01:42:48 25 system that a pharmacist is only able to access?

**Militello - Direct/Majoras**

01:42:51 1 **A** Certainly, yes.

01:42:52 2 So if a pharmacist is signed into a computer, we have  
01:42:54 3 certain functions that we can do that nobody else can do.

01:42:58 4 **Q** We've heard quite a bit about the OARRS PMP system.  
01:43:02 5 You're familiar with that?

01:43:03 6 **A** Yes.

01:43:03 7 **Q** How long have you been able to access OARRS from your  
01:43:06 8 computer?

01:43:06 9 **A** I would say a good 10 years.

01:43:09 10 **Q** What did you think about OARRS when it first became  
01:43:12 11 available?

01:43:12 12 **A** I thought it was a great program and I was happy to  
01:43:15 13 see it implemented. I mean, it's something that I use every  
01:43:18 14 day working.

01:43:22 15 **Q** Is there much communication going on in the pharmacy  
01:43:24 16 or is everyone just kind of doing their own work?

01:43:26 17 **A** It's a whole day of communication. So that's  
01:43:29 18 basically all we're doing is trying to make sure everybody  
01:43:32 19 knows what's going on and relaying things between people  
01:43:37 20 that work. It's constant.

01:43:40 21 **Q** And that includes between you and the techs as well as  
01:43:43 22 the cashier?

01:43:44 23 **A** That's between pharmacists, between pharmacist and  
01:43:48 24 technicians, technicians and cashiers, cashiers and  
01:43:53 25 technicians. It's always.

**Militello - Direct/Majoras**

01:43:55 1 Q Why?

01:43:55 2 A Because it's just important for everybody to be aware  
01:43:57 3 and knowing if there's a situation that might need attention  
01:44:02 4 for one reason or the other.

01:44:05 5 Q How many pharmacists work on a regular basis at the --  
01:44:10 6 let me tell you why I'm asking this. I don't mean on any  
01:44:13 7 given -- at a particular time.

01:44:14 8 A Um-hmm.

01:44:14 9 Q But overall, how many pharmacists work at the Eastlake  
01:44:17 10 store?

01:44:17 11 A In general, we have three steady pharmacists that are  
01:44:21 12 working that store.

01:44:23 13 Q Is there any communication among the pharmacists who  
01:44:25 14 work in the Eastlake store?

01:44:26 15 A Yeah, most definitely.

01:44:28 16 Q Why is that?

01:44:29 17 A Because we feel it's important for all of us to be on  
01:44:33 18 the same page regarding certain things. So we freely, you  
01:44:38 19 know, talk about things, whether it's, you know, a specific  
01:44:43 20 patient prescription, something we're concerned over,  
01:44:46 21 something we want to make sure they know to pass on to a  
01:44:49 22 patient, just all kinds of reasons.

01:44:51 23 Q Has that changed at all over time in the 25 years  
01:44:54 24 you've been there, the level of communication?

01:44:56 25 A I think we've always communicated between pharmacists,

**Militello - Direct/Majoras**

01:45:00 1 always, yeah.

01:45:01 2 **Q** Looking back to our drawing here, there's something  
01:45:04 3 right in the middle called C-II safe.

01:45:07 4 **A** Yes.

01:45:08 5 **Q** What is that?

01:45:08 6 **A** There is a locked safe that contains the controlled II  
01:45:16 7 substances, and it's located behind the pharmacy bench.

01:45:18 8 **Q** Who has access to that safe?

01:45:19 9 **A** The pharmacist.

01:45:19 10 **Q** Is that a key pad access?

01:45:22 11 **A** It's a magnetic key that allows us access.

01:45:26 12 **Q** And I don't want to get into particulars here for  
01:45:33 13 security reasons, but is there some time-activation element  
01:45:37 14 of safety about that safe?

01:45:37 15 **A** There is, yes.

01:45:38 16 **[REDACTED]**

01:45:40 17 **[REDACTED]**

01:45:40 18 **[REDACTED]**

01:45:49 19 **[REDACTED]**

01:45:51 20 **[REDACTED]**

01:45:52 21 **[REDACTED]**

01:45:58 22 **[REDACTED]**

01:46:00 23 **Q** And then finally, there's the bagged prescription  
01:46:07 24 shelf. I think we've probably seen those before, but tell  
01:46:10 25 us what that is.

**Militello - Direct/Majoras**

01:46:11 1 **A** The bagged prescriptions are after the pharmacist has  
01:46:14 2 completed their final visual check on the medication, it  
01:46:19 3 goes into a plastic bag which hangs in a day, numerical  
01:46:25 4 color order in the front of the pharmacy so that those can  
01:46:29 5 be quickly obtained when a patient comes in to pick up their  
01:46:36 6 medication.

01:46:36 7 **Q** And I forgot to mention the motion detectors on the  
01:46:39 8 back wall.

01:46:40 9 **A** Yes.

01:46:40 10 **Q** I think there's a couple of those. How are those  
01:46:43 11 used?

01:46:43 12 **A** Those are in utilization from what I understand mostly  
01:46:46 13 when the alarm is set and going, those motion detectors go  
01:46:50 14 into effect to make sure there's no motion in the pharmacy.

01:46:52 15 **Q** That's when the pharmacy has cleared out and is locked  
01:46:55 16 up?

01:46:55 17 **A** For the night, yeah.

01:46:56 18 **Q** So if you had a chance to tell someone here's what I  
01:46:59 19 do all day and we just went through the description,  
01:47:01 20 anything else you want to share with the jury about the  
01:47:03 21 drawing?

01:47:04 22 **A** About the drawing. . . I guess the biggest thing is  
01:47:09 23 it's -- everybody's standing still there and that rarely  
01:47:13 24 happens on a regular day in the pharmacy. But other than  
01:47:17 25 that, I mean, it's just a -- it's a process that you kind of

**Militello - Direct/Majoras**

01:47:24 1 work and hone over the years, so. . .

01:47:30 2 **Q** Okay.

01:47:30 3 If we could take that down, I'm going to change  
01:47:33 4 topics. And again, this is something that we've had quite a  
01:47:36 5 bit of information about this case, and that's the concept  
01:47:39 6 of corresponding responsibility.

01:47:40 7 You're familiar with that?

01:47:41 8 **A** I am familiar, yes.

01:47:42 9 **Q** What does that mean to you in your practice as a  
01:47:44 10 pharmacist?

01:47:45 11 **A** I believe corresponding responsibility is for me, as a  
01:47:49 12 pharmacist, in the process of filling prescriptions of any  
01:47:53 13 sort, that I am filling them in -- pursuant to a  
01:47:58 14 prescription from a medical doctor who has diagnosed a  
01:48:03 15 patient, and that I'm dispensing them with the proper  
01:48:06 16 information they need to take the medication correctly.

01:48:08 17 **Q** And corresponding responsibility is often used when  
01:48:12 18 we're talking about controlled substances; is that right?

01:48:14 19 **A** Yes.

01:48:14 20 **Q** Is it used in other situations as a pharmacist?

01:48:17 21 **A** I feel it goes throughout your practice as a  
01:48:19 22 pharmacist because you have a corresponding responsibility  
01:48:22 23 to make sure anything you're dispensing is a proper  
01:48:29 24 dispense.

01:48:29 25 **Q** How long have you been aware that a pharmacist has a

**Militello - Direct/Majoras**

01:48:31 1 corresponding responsibility?

01:48:32 2 **A** Since I graduated pharmacy school.

01:48:35 3 **Q** Is that something you learn in pharmacy school?

01:48:37 4 **A** Certainly, we -- yeah, certainly we learn that.

01:48:40 5 **Q** On the times that you've been at Walmart, the  
01:48:43 6 25 years, have you had training opportunities?

01:48:46 7 **A** Oh, yes, we have.

01:48:49 8 **Q** Could you tell us about those, please?

01:48:51 9 **A** We've always had computer-based learning process.

01:48:57 10 They offer us continuing education through pharmacist's  
01:49:02 11 letter. They've given us opportunities to take continuing  
01:49:07 12 education hours in other areas outside of computer-based  
01:49:11 13 learning.

01:49:12 14 So they've provided us with situations and types of  
01:49:23 15 trainings that we're able to kind of go through and look at.  
01:49:28 16 And so we've had a lot of -- a lot of training throughout.

01:49:31 17 **Q** As a licensed pharmacist, do you have continuing  
01:49:33 18 education responsibilities to maintain your license?

01:49:35 19 **A** Yes.

01:49:36 20 **Q** Have you always been fully licensed for the last  
01:49:39 21 25 years or since you graduated?

01:49:40 22 **A** Yes.

01:49:41 23 **Q** Has your license ever been suspended?

01:49:42 24 **A** No.

01:49:43 25 **Q** Any disciplinary measures taken against you by the



**Militello - Direct/Majoras**

01:49:48 1 Board of Pharmacy?

01:49:49 2 **A** No.

01:49:49 3 **Q** I should ask this, but you're licensed in Ohio?

01:49:52 4 **A** Yes.

01:49:52 5 **Q** Anywhere else?

01:49:53 6 **A** No.

01:49:54 7 **Q** Switching -- switching topics again, are you familiar  
01:49:58 8 with the concept of red flags in --

01:50:02 9 **A** Yes.

01:50:02 10 **Q** In -- in performing your corresponding responsibility?

01:50:07 11 **A** Yes, I am.

01:50:07 12 **Q** What are red flags to you?

01:50:08 13 **A** Red flags to me are situations in which you come  
01:50:13 14 across filling prescriptions, for controlled substances  
01:50:17 15 mainly, where something is an issue where it doesn't quite  
01:50:25 16 fit with what you feel it should be and something that needs  
01:50:29 17 to be resolved before you fill the prescription.

01:50:31 18 **Q** During the time that you've been a pharmacist, has the  
01:50:40 19 term red flags always meant the same thing?

01:50:42 20 **A** Since I've been a pharmacist, not necessarily. We  
01:50:45 21 didn't really use that term when I first started practicing  
01:50:48 22 pharmacy.

01:50:48 23 **Q** What term did you use?

01:50:49 24 **A** We didn't necessarily have a term other than it was a  
01:50:53 25 situation where something in your pharmacist training has

**Militello - Direct/Majoras**

01:50:57 1 told you that something is not right here and that you need  
01:50:59 2 to resolve it before you fill a prescription.

01:51:02 3 **Q** And other than -- and maybe not using the term red  
01:51:06 4 flags, was the process of resolving those situations the  
01:51:10 5 same type of thing you're doing today?

01:51:11 6 **A** Yes.

01:51:11 7 **Q** Have you had tools available to you to help you in  
01:51:15 8 doing that?

01:51:18 9 **A** I've -- especially as things have evolved, certainly,  
01:51:22 10 yes, but we've always used whatever tools were available  
01:51:25 11 that were available to us to be able to make sound decisions  
01:51:30 12 in what we filled.

01:51:33 13 **Q** When you are evaluating prescriptions to assess  
01:51:37 14 whether they're legitimate, is that an easy process?

01:51:40 15 **A** Not always.

01:51:40 16 **Q** Why?

01:51:41 17 **A** There's a lot of factors that play into dispensing a  
01:51:45 18 prescription, so it's not necessarily a cut-and-dry  
01:51:49 19 situation where either it's a yes or a no. There are a lot  
01:51:52 20 of gray areas that you have to evaluate and use your best  
01:51:57 21 professional judgment to decide whether you're going to fill  
01:51:59 22 that or not fill that.

01:52:01 23 **Q** So you said you've been doing this for 25 years. How  
01:52:04 24 does your experience play into helping you resolve --  
01:52:09 25 determining whether a prescription is legitimate?

**Militello - Direct/Majoras**

01:52:11 1 **A** Yeah, experience is I would -- it's a huge -- a huge  
01:52:15 2 measure. The more you've dealt with different situations,  
01:52:19 3 different circumstances, different patients, you learn --  
01:52:23 4 you learn a lot. You learn what to look for.

01:52:27 5 **Q** Can you give us examples of things that, because of  
01:52:29 6 the position you're in now, you might be able to readily  
01:52:32 7 assess because of your experience?

01:52:34 8 **A** Just simply -- I mean one that sticks out most is I  
01:52:37 9 know my patients. So if I have a patient that's been  
01:52:40 10 dealing with a newly diagnosed cancer and they have some  
01:52:46 11 prescriptions that are from, you know, I don't know, out of  
01:52:51 12 the area or a doctor that's kind of obscure that I have not  
01:52:55 13 seen before, or it's for a combination of a couple things,  
01:52:59 14 maybe to help quell their anxiety and also to help treat the  
01:53:03 15 pain of their cancer, it's not something that necessarily is  
01:53:05 16 going to cause me to throw up my hands and call the doctor  
01:53:08 17 or say I'm not going to fill it. It's something that I  
01:53:11 18 evaluate and then talk to the patient about and -- it's just  
01:53:16 19 something I can better evaluate.

01:53:18 20 **Q** Just if you have a prescription where you don't know  
01:53:22 21 the patient or maybe don't know the doctor or the doctor's  
01:53:24 22 specialty, how are you able to learn more about that?

01:53:28 23 **A** Mainly, obviously, we're going to utilize -- I will  
01:53:33 24 utilize OARRS in that case for sure. Also, we have a system  
01:53:38 25 or a website available to us that we can look up physicians

**Militello - Direct/Majoras**

01:53:44 1 and we can tell specialties, we can tell licenses, so that's  
01:53:49 2 a way. And really by talking to the patient, calling the  
01:53:54 3 doctor, if necessary. So there are different things we can  
01:53:57 4 do.

01:53:57 5 **Q** How does the doctor's specialty or how can the  
01:54:01 6 doctor's specialty help you in making a decision about a  
01:54:03 7 prescription fill?

01:54:05 8 **A** Well, for instance, if we have a doctor who is --  
01:54:11 9 that's, you know, a doctor that I know is at Seidman Cancer  
01:54:16 10 Center, that makes a big difference on whether I'm getting a  
01:54:19 11 high dose opioid prescription from him or if I'm getting it  
01:54:22 12 from a primary care provider or pediatrician for an adult or  
01:54:28 13 something where I would say, you know, this needs more  
01:54:31 14 attention.

01:54:31 15 **Q** And the Seidman Cancer Center, that's part of the  
01:54:35 16 University Hospital system?

01:54:35 17 **A** It is, yes.

01:54:36 18 **Q** What about if a doctor has a specialty as being a pain  
01:54:41 19 medicine specialist?

01:54:42 20 **A** Yes.

01:54:42 21 **Q** Does that give you any information?

01:54:43 22 **A** Oh, certainly it gives us a background as to why the  
01:54:48 23 patient is, you know -- what the patient is experiencing  
01:54:54 24 potentially that is causing them to have to see a doctor of  
01:54:57 25 this capacity and then what's being prescribed.

**Militello - Direct/Majoras**

01:55:00 1       **Q**       And we briefly mentioned Connexus. As I said, another  
01:55:06 2       witness has talked about it, but what is it that Connexus  
01:55:09 3       can tell you, the computer system can tell you?

01:55:11 4       **A**       Oh, my goodness. Connexus has a lot of different -- I  
01:55:15 5       mean abilities that we can use, just beyond being able to  
01:55:20 6       look up patients' histories at our pharmacy, doctors,  
01:55:28 7       medication usage, notes from other pharmacists. I mean  
01:55:37 8       there's a lot of other abilities that we have just by having  
01:55:39 9       Connexus in front of us.

01:55:40 10      **Q**       Going back to the times when it's difficult to make  
01:55:43 11      the call or you get a close call on a prescription whether  
01:55:47 12      to fill, why not just refuse it?

01:55:50 13      **A**       I can't always just refuse it. I feel like I have to  
01:55:53 14      talk to the patient and I have to do what's in the best  
01:55:55 15      interest of the patient.

01:55:57 16            So if in professional judgment, after going through  
01:56:01 17      things and kind of evaluating the whole thing I still feel  
01:56:06 18      it's better for the patient to get that prescription, I  
01:56:09 19      don't feel it's ethical for me to say no, I'm not going to  
01:56:13 20      fill it.

01:56:14 21      **Q**       Have you ever been concerned that you may have gotten  
01:56:16 22      your judgment wrong?

01:56:19 23      **A**       I'm sure there are always those possibilities of that  
01:56:22 24      happening, so, yeah. There's probably certain times where,  
01:56:25 25      boy, I hope I called that right, but in my heart when I

**Militello - Direct/Majoras**

01:56:28 1 filled it, I felt that I did.

01:56:31 2 **Q** Have you ever felt any pressure from Walmart to fill  
01:56:34 3 any prescriptions that you did not feel comfortable filling?

01:56:36 4 **A** No.

01:56:38 5 **Q** Has Walmart ever placed time limits on you as to how  
01:56:42 6 quickly you need to fill a prescription?

01:56:43 7 **A** I've never felt any pressure about how fast I have to  
01:56:47 8 fill a prescription. If I feel it needs extra attention,  
01:56:50 9 I've given it the extra attention it needs.

01:56:54 10 **Q** Are you familiar with the term "refusal to fill"?

01:56:57 11 **A** Yes.

01:56:58 12 **Q** What is that?

01:56:59 13 **A** "Refusal to fill" is if we have gone over the  
01:57:03 14 information that we have available and we have decided that  
01:57:07 15 this is not a prescription that I feel comfortable filling,  
01:57:11 16 I can refuse that fill. And subsequently, I would fill out  
01:57:15 17 a form stating that fact.

01:57:17 18 **Q** And what happens with the form?

01:57:19 19 **A** It's submitted to the home office.

01:57:22 20 **Q** Is that available to any other pharmacists in the  
01:57:26 21 computer system that Walmart operates?

01:57:28 22 **A** Yes, it is available through Archer. So if I do  
01:57:32 23 refuse a specific prescription or basically prescriber, that  
01:57:36 24 is able to be seen as to why I refused that prescriber.

01:57:41 25 **Q** And you mentioned the Archer system. And again, we've

**Militello - Direct/Majoras**

01:57:44 1 heard some testimony about that. That system came into  
01:57:47 2 place around 2015; is that right?

01:57:49 3 **A** I believe so, yes.

01:57:50 4 **Q** So prior to that, how would pharmacists, how did you  
01:57:53 5 as a pharmacist at the Walmart pharmacy learn information  
01:57:57 6 about refusals to fill before the computer system had it?

01:58:00 7 **A** Well, at that time, we didn't necessarily have a  
01:58:03 8 specific name for them, but we would talk between  
01:58:06 9 pharmacists, both Walmart pharmacists and also pharmacies  
01:58:10 10 that maybe were in our area, the, you know, pharmacy down  
01:58:15 11 the street or surrounding us within a two-mile radius.

01:58:19 12 We'd kind of give them a call and feel out if they had  
01:58:23 13 had any experience with that prescriber or patient or  
01:58:25 14 whatever that might be.

01:58:27 15 **Q** So why would you contact another pharmacy?

01:58:31 16 **A** Because it was just gathering information in a way  
01:58:37 17 that we had available to us to kind of be part of our  
01:58:42 18 evaluation process for filling.

01:58:44 19 **Q** Did you have pharmacist friends at other pharmacies?

01:58:47 20 **A** Certainly acquainted, we were acquainted with each  
01:58:51 21 other, yeah.

01:58:52 22 **Q** And how would you make a decision as to when is the  
01:58:54 23 right time to talk to another pharmacy or another  
01:58:57 24 pharmacist?

01:58:58 25 **A** It would depend on the issue that we were having with

**Militello - Direct/Majoras**

01:59:03 1 a particular prescription. If it was something that really  
01:59:06 2 did not sit well, then we would call -- I would call around  
01:59:10 3 and say, you know, I'm not sure if you've ever filled  
01:59:15 4 anything for this patient, but have you had any experience  
01:59:19 5 with them, or this prescriber, have you had any experience  
01:59:23 6 with this prescriber, just to find out if that was something  
01:59:27 7 on anyone else's radar.

01:59:30 8 **Q** Would you ever get contacts in reverse, someone else  
01:59:32 9 calling you?

01:59:33 10 **A** Yes.

01:59:33 11 **Q** And did you find those to be useful?

01:59:35 12 **A** Certainly, yeah.

01:59:36 13 **Q** Why?

01:59:36 14 **A** Um-hmm. It was just another way to gather  
01:59:40 15 information. So if somebody else was questioning something,  
01:59:43 16 that would definitely be put in the files of the brain just  
01:59:49 17 for future reference.

01:59:52 18 **Q** In your work as a pharmacist in the Eastlake store,  
01:59:55 19 have you had to have contacts with law enforcement  
01:59:58 20 individuals?

01:59:59 21 **A** Yes.

01:59:59 22 **Q** Why?

02:00:01 23 **A** We would also contact Lake Narcotics fairly regularly  
02:00:07 24 if there was a physician we had a question about, if there  
02:00:09 25 was a patient that we were kind of concerned about, we would



**Militello - Direct/Majoras**

02:00:13 1 contact Lake Narcotics to let them know that we were having  
02:00:17 2 the concerns, maybe they had already had concerns from other  
02:00:20 3 pharmacies as well, and they would let us know that.

02:00:23 4 So there was just a communication process with them.

02:00:25 5 **Q** If you had a concern that a prescription was forged or  
02:00:28 6 was fraudulent --

02:00:30 7 **A** Yes.

02:00:30 8 **Q** -- would you have contacts with the law enforcement  
02:00:33 9 officials?

02:00:33 10 **A** Yes.

02:00:33 11 **Q** Same folks over at the Lake County Narcotics?

02:00:39 12 **A** Right, yes.

02:00:40 13 **Q** Anyone else?

02:00:41 14 **A** Depends.

02:00:42 15 I never personally have had a case where the forgery  
02:00:45 16 has gone to the point of the doctor having to fax us a  
02:00:49 17 signed release that that indeed was forged and that we've  
02:00:51 18 had to call in law enforcement other than that to take care  
02:00:55 19 of the situation.

02:00:56 20 So I have never, but it can happen that way, too.

02:00:59 21 **Q** We've all had a chance to meet Trey Edwards, who  
02:01:03 22 testified earlier.

02:01:04 23 Do you know Mr. Edwards or Agent Edwards?

02:01:06 24 **A** I do know him, yes.

02:01:06 25 **Q** How do you know him?

**Militello - Direct/Majoras**

02:01:08 1 **A** When I first started, he was the Lake Narcotics agent  
02:01:13 2 that would come into our store fairly regularly.

02:01:15 3 **Q** Did you know that his wife was a pharmacist?

02:01:18 4 **A** I did. I know Jen. She works at the Giant Eagle,  
02:01:23 5 yep.

02:01:23 6 **Q** How would you describe your interaction in  
02:01:25 7 relationship with the law enforcement officials in  
02:01:27 8 Lake County?

02:01:27 9 **A** As far as Lake Narcotics, I thought it was great. I  
02:01:30 10 mean, we had a really good relationship with them, and we  
02:01:35 11 always felt like, you know, they would address things pretty  
02:01:40 12 promptly to a point, and then I think they got overrun.

02:01:45 13 **Q** The -- oh, the narcotics enforcement group?

02:01:48 14 **A** Yeah.

02:01:49 15 **Q** Switching topics yet again, you talked about resolving  
02:01:54 16 red flags. And I'd like to talk to you now about  
02:01:56 17 documentation.

02:01:57 18 **A** Um-hmm.

02:01:57 19 **Q** When you identify and take steps to resolve a red  
02:02:02 20 flag, do you document it?

02:02:03 21 **A** If I have taken a step to -- yes, to call, to work out  
02:02:09 22 something that wasn't, you know, making sense or -- I would  
02:02:14 23 try to document that, yes.

02:02:15 24 **Q** You said when you take -- when you had taken steps.  
02:02:17 25 Are there other ways, short of taking steps that you

**Militello - Direct/Majoras**

02:02:22 1 described, that you can resolve red flags?

02:02:24 2 **A** Yeah. I mean, the red flags that are listed aren't  
02:02:30 3 always generally a red flag, so they're listed as potential  
02:02:33 4 red flags.

02:02:34 5 So sometimes I can look at a prescription and what may  
02:02:37 6 be a red flag for a pharmacist that's visiting from, I don't  
02:02:42 7 know, Toledo, they might have to call on that prescription.

02:02:47 8 I don't necessarily have to because I can work it out  
02:02:49 9 in my process that I know it's a good prescription.

02:02:53 10 **Q** So it sounds like there might be like a chicken or egg  
02:02:56 11 problem; when is it a red flag versus when it's something  
02:03:00 12 you're able to resolve right away.

02:03:01 13 How do you -- how do you do that?

02:03:03 14 **A** I just evaluate the prescription for what it is, who's  
02:03:06 15 writing it, who's the patient, what's the medication, how's  
02:03:11 16 it being prescribed, how many tablets are being prescribed,  
02:03:17 17 so what other medications does the patient take.

02:03:20 18 **Q** You mentioned that when you take steps, you try to  
02:03:23 19 document it. What about if you were to check OARRS?

02:03:27 20 **A** I document that I check, yes.

02:03:29 21 **Q** All right.

02:03:31 22 And so we're clear on what documentation is as a  
02:03:33 23 pharmacist, when you -- first of all, where do you document  
02:03:36 24 that you checked OARRS?

02:03:38 25 **A** Generally, I -- it's documented for sure on the

**Militello - Direct/Majoras**

02:03:43 1 prescription, but also in Connexus.

02:03:45 2 **Q** And when you put it in Connexus, give us an example of  
02:03:49 3 what you'd actually type in, like the words or phrases?

02:03:52 4 **A** Well, we kind of keep things kind of shorthand. So  
02:03:55 5 generally, I'll type in -- these days, I type in Narx  
02:03:59 6 because we use a NarxCare application mostly, so then I'll  
02:04:02 7 write Narx and then the date and my initials.

02:04:04 8 **Q** So if someone were to look that up later, it would  
02:04:09 9 come up -- let's talk about OARRS. How would you abbreviate  
02:04:12 10 OARRS?

02:04:12 11 **A** Usually I abbreviated OARRS with just an O.

02:04:16 12 **Q** So it would show O then what?

02:04:17 13 **A** Then the date that I checked OARRS, and then my  
02:04:20 14 initials.

02:04:20 15 **Q** And is that standard at Walmart, that when something  
02:04:23 16 is put into the system, you put your initials after it?

02:04:27 17 **A** Yes.

02:04:31 18 **Q** I'd like to walk you through a few prescriptions --

02:04:36 19 **A** Sure.

02:04:37 20 **Q** -- that you actually filled, and maybe that will help  
02:04:40 21 even further explain to the jury how you go about analyzing  
02:04:44 22 prescriptions as a pharmacist.

02:04:47 23 So, in the binder in front of you, you have -- you  
02:04:49 24 have a binder with some tabs on it, 1 through 9, I believe.

02:04:54 25 **A** I'm not seeing it.

**Militello - Direct/Majoras**

02:04:59 1 **Q** Oh, it's coming. It's on its way.

02:05:03 2 **A** Okay. Got it. Okay.

02:05:13 3 **Q** So what I'd like you to do is if you'll turn to Tab 1  
02:05:16 4 of your binder -- and for the record, this is  
02:05:27 5 WMT-MDL-01343-0501.

02:05:30 6 And before we blow that up so it's a little easier to  
02:05:33 7 read, what is the difference between what's at the top of  
02:05:35 8 the screen and the bottom of the screen?

02:05:42 9 **A** Okay.

02:05:43 10 So the top of the screen is the actual -- it's called  
02:05:49 11 On-Call Data but it was a faxing process. So that is the  
02:05:53 12 actual prescription, and the bottom part of the sheet is our  
02:05:57 13 what we call an end-of-day label.

02:06:00 14 **Q** What is the -- what is an end-of-day label, and what  
02:06:03 15 does it do?

02:06:04 16 **A** It helps sequentially file a prescription, and it's  
02:06:07 17 got the pertinent information on that prescription. It  
02:06:11 18 tells the prescription number, patient, the date of birth  
02:06:16 19 for the patient, the date it was filled, who actually --  
02:06:22 20 what we call four point, which is a process before filling  
02:06:26 21 where the pharmacist visually compares the prescription to  
02:06:30 22 what's been input into Connexus.

02:06:34 23 So that's a four point. It tells who did that. It  
02:06:37 24 tells who visual verifies, which means when the prescription  
02:06:40 25 has been physically filled and it comes to the pharmacist

**Militello - Direct/Majoras**

02:06:43 1 for that pharmacist to look at the label, the drug inside,  
02:06:48 2 the name, all of that kind of thing. So that's the visual  
02:06:51 3 verify pharmacist.

02:06:52 4 And then the fill is the technician or potential  
02:06:55 5 pharmacist who filled that prescription, so actually took  
02:06:59 6 the stock bottle from the shelf and counted that out. It  
02:07:04 7 also --

02:07:04 8 **Q** No --

02:07:06 9 **A** I'm sorry.

02:07:07 10 **Q** No. I'm sorry.

02:07:07 11 **A** It also gives the doctor's name, address, the DEA,  
02:07:10 12 which is their Drug Enforcement Agency number, and the NPI,  
02:07:17 13 which is a number used for prescribers, pharmacies,  
02:07:22 14 pharmacist number, along with the drug.

02:07:24 15 **Q** Just so we're clear, so this label, the end-of-day  
02:07:26 16 label, that's something that you at the pharmacy put on to  
02:07:29 17 the back of the prescription?

02:07:30 18 **A** If it's a hard copy prescription, yes. If it's a  
02:07:34 19 medication that's sent by e-script, then it prints off at  
02:07:39 20 end of day.

02:07:41 21 **Q** I want to go back to the original prescription but  
02:07:43 22 before we do that, since it's -- well, it disappeared.  
02:07:47 23 Let's go to the original prescription, and we'll work our  
02:07:49 24 way back.

02:07:50 25 **A** Okay.

**Militello - Direct/Majoras**

02:07:54 1 **Q** All right.

02:07:54 2 So what I'd really like you to do is take us through  
02:07:57 3 how you, as a pharmacist, when you're looking at this, what  
02:08:01 4 is some of the pertinent information that you are trying to  
02:08:03 5 look at right away to help you in making your decision about  
02:08:08 6 how to fill it?

02:08:10 7 **A** Okay.

02:08:11 8 So the first thing that I would have noticed is that  
02:08:14 9 it was a morphine prescription, and it came over as a fax.  
02:08:18 10 And so that is not allowed to be done. A fax cannot happen  
02:08:22 11 unless it's a hospice patient or a long-term care patient.

02:08:27 12 So the first thing I would have looked for is to make  
02:08:29 13 sure that that hospice patient was written on there because  
02:08:33 14 by law, it has to be written on there. So it was in the  
02:08:37 15 notes. So, therefore, I know it came from a hospice  
02:08:41 16 facility for a hospice patient.

02:08:45 17 **Q** So there's some handwriting at the top that also says  
02:08:50 18 hospice patients, some initials and a date. What's that?

02:08:52 19 **A** That was just me verifying that I did see hospice  
02:08:57 20 patient on the prescription itself that came over, and those  
02:09:00 21 initials are my initials and the date that I filled the  
02:09:02 22 prescription.

02:09:02 23 **Q** So you said that one of the things you had to check is  
02:09:05 24 because it's a fax, you were allowed to receive faxes from  
02:09:09 25 hospice providers; correct?

**Militello - Direct/Majoras**

02:09:10 1 **A** Correct.

02:09:11 2 **Q** Okay.

02:09:11 3 What else does that tell you about this particular  
02:09:13 4 patient or this prescription, knowing it's from a hospice?

02:09:16 5 **A** Well, the prescription itself is for morphine  
02:09:24 6 solution. And so right there, the way that it's written for  
02:09:28 7 a bottle of morphine solution and to take it every hour in  
02:09:32 8 that manner for shortness of breath or pain as needed, that  
02:09:37 9 to me tells me that either, number one, they're at the very  
02:09:41 10 end of life, or number two, that this was sent over in  
02:09:46 11 combination with some other medications that they keep on  
02:09:51 12 hand. We call it a hospice kit, but that's a combination of  
02:09:56 13 medications that are kept on hand at the hospice patient's  
02:10:00 14 home so that when they are experiencing end-of-life symptoms  
02:10:06 15 and issues, that they can immediately have these -- access  
02:10:10 16 to these to be able to be given.

02:10:14 17 **Q** So when you say a hospice kit, is that something  
02:10:17 18 pre-packaged?

02:10:17 19 **A** It's not pre-packaged. We don't pre-package it, but  
02:10:20 20 it is something that hospice orders usually in a sequential  
02:10:25 21 format. They'll order this group of medications so it's  
02:10:28 22 available to the hospice nurse.

02:10:30 23 **Q** Is there a -- here we have the morphine being taken by  
02:10:33 24 mouth. Is there something that you would typically expect  
02:10:35 25 to be in a kit if that was ordered --



**Militello - Direct/Majoras**

02:10:39 1 **A** Yeah, definitely the morphine is one medication that's  
02:10:42 2 generally ordered. The Lorazepam or brand name is Ativan so  
02:10:48 3 it's a benzodiazapine. That's very often ordered for that  
02:10:51 4 kit.

02:10:53 5 There's another drug called Hyoscyamine, which is for  
02:10:56 6 excessive secretions. So they'll very often put that liquid  
02:11:00 7 in there for patients so that they have some relief from  
02:11:03 8 that.

02:11:04 9 Sometimes haloperidol, which will calm agitation. So  
02:11:09 10 that's usually the group of them we might see.

02:11:11 11 **Q** So looking further at the prescription in front of  
02:11:16 12 you, there's some information we've talked about before with  
02:11:19 13 the jury. It's redacted so we can't get the personal health  
02:11:21 14 information, but there's a date of birth that would be on  
02:11:24 15 the prescription?

02:11:24 16 **A** Um-hmm, yes.

02:11:25 17 **Q** Is that something you look at, the date of birth of  
02:11:28 18 the individual?

02:11:29 19 **A** Certainly it's something we would take into account,  
02:11:32 20 but hospice can happen at any point in life. So it wouldn't  
02:11:36 21 necessarily be any type of deciding factor.

02:11:42 22 **Q** Anything else as we look at this that you think it  
02:11:45 23 would be interesting to point out to the jury as you were --  
02:11:48 24 as you would evaluate a script?

02:11:49 25 **A** Well, the patient -- or the, I'm sorry, prescriber, is

**Militello - Direct/Majoras**

02:11:54 1 a prescriber whose address comes up as Ridge Road in Parma,  
02:11:59 2 which is definitely not in Eastlake territory, but that is  
02:12:04 3 because usually these hospice providers are out of an office  
02:12:10 4 and they see the hospice patients.

02:12:13 5 So it's not anything unusual to see a centralized  
02:12:17 6 office address like that on there.

02:12:19 7 **Q** But -- so it's a centralized office but where might  
02:12:22 8 the actual hospice care be?

02:12:25 9 **A** At home.

02:12:26 10 **Q** And you mentioned Parma. That's just a little bit  
02:12:29 11 southwest of downtown Cleveland?

02:12:31 12 **A** Right, yes.

02:12:32 13 **Q** Anything else that strikes you as noteworthy on this  
02:12:37 14 prescription?

02:12:46 15 **A** Not necessarily, no.

02:12:48 16 **Q** Okay. Let's turn back to the end-of-day label. I  
02:12:52 17 want to see if we could put out a few things there.

02:13:02 18 Thank you, Mr. Perry, for turning that right side up.

02:13:05 19 So you've covered some of this already, but tell us  
02:13:08 20 what a four point is, the 4pt. What is a four point to a  
02:13:15 21 pharmacist?

02:13:15 22 **A** To a pharmacist, as we're on the bench there, there's  
02:13:17 23 a -- there's queues that we look at. Four point is one of  
02:13:23 24 those queues and it prioritizes, Connexus prioritizes those  
02:13:26 25 queues and brings them up on our screen.

**Militello - Direct/Majoras**

02:13:28 1           So in the four-point process or the four-point queue,  
02:13:32 2           the actual copy of the prescription, if it was a hard copy,  
02:13:36 3           it's scanned into the system at the drop-off window. If  
02:13:41 4           it's an e-script, then that e-script is just what shows up  
02:13:45 5           on our four point screen so that we can compare information  
02:13:49 6           from the prescription itself to what we have input into  
02:13:54 7           Connexus.

02:13:57 8       **Q**       And then you have the VV, which is visual  
02:14:00 9       verification?

02:14:00 10      **A**       Correct.

02:14:00 11      **Q**       So how does that differ from the four point?

02:14:03 12      **A**       The visual verify is actually the process of the  
02:14:07 13           pharmacist checking the physical drug itself, the bottle,  
02:14:12 14           the label, make sure that all matches up. And generally,  
02:14:17 15           during the visual verify, for a prescription, I usually will  
02:14:22 16           go back over the prescription itself to make sure that the  
02:14:25 17           label reads properly.

02:14:28 18      **Q**       So when you have your initials as the LMI by VV, is  
02:14:34 19           that the equivalent of saying that you're the pharmacist  
02:14:36 20           that ultimately filled this prescription?

02:14:37 21      **A**       I'm the pharmacist that four-pointed it and also  
02:14:41 22           visual verified that drug. My technician filled it.

02:14:44 23      **Q**       By -- and by filling it, what is the technician  
02:14:47 24           actually doing?

02:14:48 25      **A**       She is or he, but she in this case, is removing the

**Militello - Direct/Majoras**

02:14:52 1 stock bottle from the pharmacy shelf and then filling that  
02:14:58 2 medication and placing it on a rack for us to check.

02:15:02 3 Now, in this case, it was morphine. So she would have  
02:15:05 4 to then come to me and say, I need morphine solution. I  
02:15:10 5 have to go to the safe. [REDACTED]

02:15:14 6 [REDACTED] and then I get that medication out.

02:15:18 7 If it's a medication where we need a count, she'll  
02:15:23 8 generally do that initial count. She will double count it,  
02:15:28 9 and then I will triple count it when I get to it and back  
02:15:31 10 count the stock bottle.

02:15:32 11 **Q** So as you look at a prescription like this, and this  
02:15:35 12 one was filled in 2013, anything about this prescription  
02:15:37 13 that raises some flags or concerns to you?

02:15:40 14 **A** No.

02:15:42 15 **Q** Would you be surprised to know that you also filled a  
02:15:45 16 prescription written by the same doctor for the same patient  
02:15:49 17 for Lorazepam on the same day?

02:15:51 18 **A** No.

02:15:52 19 **Q** What is Lorazepam?

02:15:54 20 **A** Lorazepam is a benzodiazapine used for anxiety.

02:15:59 21 **Q** And why would that not surprise you?

02:16:03 22 **A** Because as I mentioned earlier, a lot of times it's  
02:16:05 23 issued to the patient for that hospice kit. And also a  
02:16:10 24 hospice patient, even if it's not for the kit, there's  
02:16:14 25 usually an amount of anxiety that goes along with that

**Militello - Direct/Majoras**

02:16:18 1 process. So that would not have raised any red flag for me.

02:16:21 2 **Q** So if a -- one of the experts for the plaintiffs were  
02:16:24 3 to say that this prescription has a red flag because it's a  
02:16:28 4 combination of a benzo and an opioid, what's your response  
02:16:37 5 to that?

02:16:37 6 **A** I would say not in this case.

02:16:38 7 **Q** Are there some cases where it would be?

02:16:40 8 **A** Some cases it would be.

02:16:41 9 **Q** And how do you go by differentiating which ones are  
02:16:47 10 and which ones aren't?

02:16:47 11 **A** By evaluating the prescription, the prescriber, the  
02:16:50 12 patient, the diagnosis.

02:16:53 13 **Q** Would you feel, if you filled both the Lorazepam and  
02:16:58 14 the morphine prescriptions at the same time, would you feel  
02:17:00 15 an obligation to write down why you did it and how you did  
02:17:03 16 it?

02:17:04 17 **A** No, I would not.

02:17:04 18 **Q** Why not?

02:17:05 19 **A** Because it's something that, in my practice of  
02:17:09 20 pharmacy, that's not something that should raise -- it  
02:17:13 21 doesn't raise a red flag to me. So I wouldn't -- I wouldn't  
02:17:16 22 document it.

02:17:17 23 **Q** Okay. Let's take a look at another prescription.

02:17:20 24 This is in Tab 2 of your binder. And the -- for the  
02:17:28 25 record, the number is WMT-MDL-01343\_0110.

**Militello - Direct/Majoras**

02:17:41 1 And then I'll also put in the record that we have an  
02:17:44 2 additional, which I think is just the blowup of this,  
02:17:48 3 WMT-MDL-01343-011.

02:17:55 4 And I'll actually look at mine to see if I said that  
02:18:01 5 correctly. And there's a reason why I do that because I was  
02:18:04 6 wrong. Okay.

02:18:04 7 Let's -- the second number I gave you is actually  
02:18:07 8 going to be the end-of-day label. Let's look first at what  
02:18:10 9 we have in front of us. And I'd like to really have you  
02:18:14 10 kind of go through what you did with the prescription you  
02:18:17 11 saw a moment ago.

02:18:17 12 What are -- if this is in front of you, what's  
02:18:20 13 important, what are you looking at? How are you evaluating  
02:18:22 14 this?

02:18:22 15 **A** For the prescription in front of me, the first thing I  
02:18:26 16 would notice is the fact that it's a dental prescription, so  
02:18:30 17 it's coming from a dentist.

02:18:32 18 **Q** Why does that matter to you?

02:18:34 19 **A** Because a dentist is likely in this case, with Ativan  
02:18:39 20 like this, which is Lorazepam, which is used for anxiety,  
02:18:45 21 they are likely to write this for a procedure that may  
02:18:49 22 really make a patient nervous. And so they will issue this,  
02:18:54 23 as it looks like he did, for just a small amount, 12  
02:19:02 24 tablets, which is in parenthesis, to cover three  
02:19:07 25 appointments for the patient. And the directions on that

**Militello - Direct/Majoras**

02:19:10 1 read, "Two tablets the evening before going to bed and then  
02:19:14 2 two tablets the hour before the procedure."

02:19:17 3 So -- and then they make sure they write on there to  
02:19:21 4 not drive or use heavy machinery. So that's just to make  
02:19:24 5 sure the patient knows that they're going to need a driver.

02:19:27 6 **Q** So let's do what I think will be pretty simple math.  
02:19:31 7 There are three appointments, and it looks for each  
02:19:34 8 appointment, the prescription is to take two tablets the  
02:19:38 9 night before and then two tablets an hour before the  
02:19:41 10 appointment; is that right?

02:19:42 11 **A** That's right.

02:19:43 12 **Q** So for three appointments, you would end up with 12  
02:19:46 13 tablets; is that right?

02:19:46 14 **A** That's correct.

02:19:52 15 **Q** Anything else with this particular prescription that  
02:19:54 16 you would be looking at?

02:19:55 17 **A** The dentist is out of Great Northern, which is North  
02:19:58 18 Olmsted, which is probably 40 minutes from Eastlake, but in  
02:20:03 19 the case of dental prescriptions, sometimes people go to a  
02:20:06 20 specific dentist to have a specific procedure. So that  
02:20:09 21 wouldn't have raised any type of issue or red flag for me.

02:20:12 22 **Q** And you personally are familiar with North Olmsted?

02:20:15 23 **A** I am, yeah. That's where I worked on and off for a  
02:20:18 24 few years after my first son was born.

02:20:22 25 **Q** Okay. So let's now turn to the next page, and I'll

**Militello - Direct/Majoras**

02:20:25 1 just make sure the record is clear on this.

02:20:27 2 This, in fact, is WMT-MDL-01343-09641. Let's blow  
02:20:38 3 that up.

02:20:39 4 Now, do you recognize this as the end-of-day label for  
02:20:41 5 that prescription we just looked at?

02:20:47 6 **A** Yes, that appears to be correct.

02:20:50 7 **Q** So take us just quickly through. Who did the four  
02:20:53 8 point on this one?

02:20:54 9 **A** The four point was done by a colleague -- well,  
02:20:58 10 actually the pharmacy manager at that time.

02:21:00 11 **Q** And the visual verify is you?

02:21:02 12 **A** That's correct.

02:21:03 13 **Q** Is it unusual that one pharmacist would do the four  
02:21:07 14 point and another would do the visual verify?

02:21:10 15 **A** No, not at all.

02:21:11 16 **Q** And then the fill is by someone with the initials PAH?

02:21:15 17 **A** That's a technician.

02:21:18 18 **Q** And then also here, there's a -- the PAT, PAY, is that  
02:21:24 19 patient pay?

02:21:24 20 **A** That is correct, right.

02:21:25 21 **Q** So what does that indicate?

02:21:27 22 **A** I think that would be indicating how much the patient  
02:21:30 23 actually did pay for the prescription.

02:21:32 24 **Q** So \$5.73, if I'm reading that correctly?

02:21:36 25 **A** Yes.



**Militello - Direct/Majoras**

02:21:37 1 **Q** Anything else about the end-of-day label that you  
02:21:42 2 think is worth sharing?

02:21:47 3 **A** Not -- not necessarily, no.

02:21:49 4 **Q** Okay.

02:21:49 5 So taken together, the prescription and the end-of-day  
02:21:53 6 label, any red flags or concerns to you about this?

02:21:56 7 **A** No, not for me.

02:22:01 8 **Q** So would it surprise you to know that on the same day,  
02:22:09 9 from the same prescriber, the same dentist, there is another  
02:22:13 10 medication that you filled for hydro APAP?

02:22:18 11 **A** No, that would not surprise me.

02:22:19 12 **Q** Okay.

02:22:19 13 So first let's go -- let's talk -- what is hydro APAP?  
02:22:24 14 And I'll tell you the strength was 10/500 milligrams.

02:22:27 15 **A** So that's hydrocodone, which is an opioid narcotic,  
02:22:31 16 and then it's in combination with acetaminophen, which is  
02:22:35 17 like Tylenol.

02:22:36 18 **Q** And why would that not surprise you that would you  
02:22:39 19 also see that prescription that day for this patient?

02:22:40 20 **A** Because the patient is going in for three different  
02:22:44 21 appointments. So I would take into account that the  
02:22:47 22 patient's having a procedure done that they very likely need  
02:22:50 23 pain treatment for.

02:22:52 24 **Q** So when you take those two together, does that raise a  
02:22:55 25 red flag for you or a concern?

**Militello - Direct/Majoras**

02:22:57 1 **A** It doesn't raise a concern.

02:22:59 2 It's worth noting to the patient that there are  
02:23:03 3 certain risks involved, but it doesn't -- it doesn't create  
02:23:08 4 a red flag that I would not fill that combination.

02:23:10 5 **Q** So if one of the witnesses for the plaintiffs said,  
02:23:13 6 wait, this is -- this is a red flag, what's your response?

02:23:15 7 **A** That is not a red flag for me, no.

02:23:18 8 **Q** But this is -- these two products are, again, a benzo  
02:23:23 9 and a --

02:23:24 10 **A** An opioid.

02:23:24 11 **Q** -- an opioid?

02:23:26 12 **A** Yes.

02:23:29 13 **Q** What if -- what if we go back. You saw the -- on the  
02:23:37 14 end-of-day label, we mentioned the patient pay, the \$5.73.  
02:23:42 15 Does that raise an issue for you?

02:23:43 16 **A** It does not raise an issue because sometimes patients  
02:23:52 17 don't have prescription insurance. And for this medication,  
02:23:57 18 the way it was prescribed from the dentist, I'm thinking  
02:24:01 19 that's something they're not going to forego because they  
02:24:04 20 can't put it on a prescription insurance so they decided to  
02:24:08 21 pay out of pocket for it.

02:24:10 22 **Q** And I've been told that I, once again, made a mistake  
02:24:14 23 in my label of the document.

02:24:17 24 So the label we're looking at, the end-of-day label is  
02:24:21 25 WMT-MDL-01343\_0111.

**Militello - Direct/Majoras**

02:24:31 1 Your Honor, thank you. Thank you to my colleagues.

02:24:33 2 Okay.

02:24:34 3 Let's take -- let's take a look at one more if you  
02:24:36 4 would, please. This should be behind Tab 3. And I will  
02:24:46 5 read into the record that this is WMT-MDL-01343\_0963. If we  
02:25:02 6 could blow that up for Ms. Militello?

02:25:03 7 So let's do the same thing. Take us through what you  
02:25:05 8 think is, as you're looking at this, the information that  
02:25:08 9 you think is useful to know as you're thinking about filling  
02:25:10 10 it.

02:25:10 11 **A** So the first thing, again, is noticing that it's  
02:25:13 12 written by a DDS, which is a dentist prescription. It's for  
02:25:19 13 a pain medication, which certainly would not be anything  
02:25:25 14 unusual.

02:25:31 15 It's for, I'm sorry, 25 tablets, which is a fairly low  
02:25:34 16 amount for 2013. It was a very reasonable amount, for sure.

02:25:39 17 **Q** And this shows that the dosage is one tablet every  
02:25:46 18 four to six hours. So how many days of medication is this?

02:25:50 19 **A** That's going to be probably five to seven days worth  
02:25:58 20 of medication.

02:25:58 21 **Q** Anything, as you look at a prescription from a dental  
02:26:02 22 office of this nature, anything standing out to you as a  
02:26:04 23 concern or a red flag?

02:26:07 24 **A** As of 2013, no.

02:26:10 25 **Q** So when you say as of 2013, why are you distinguishing

**Militello - Direct/Majoras**

02:26:13 1 that?

02:26:13 2 **A** Because now, in 2021, there are acute pain guidelines  
02:26:18 3 that have kind of been put in place that we might -- I  
02:26:23 4 definitely would call to make sure that the patient is not  
02:26:28 5 taking any more than four of those in a day for no longer  
02:26:32 6 than seven days. So there might have been a call made in  
02:26:36 7 2021 regarding that.

02:26:37 8 **Q** When did those acute pain guidelines come into place?

02:26:42 9 **A** I'm going to say probably in the last five years.

02:26:44 10 **Q** Let's turn to the next page in your binder. This is  
02:26:49 11 the end-of-day label. WMT-MDL-01343\_ 0964. Blow that up,  
02:27:02 12 please. Okay.

02:27:06 13 This is the -- do you recognize this as the end-of-day  
02:27:08 14 label for the prescription we just saw?

02:27:09 15 **A** Yes, I do.

02:27:10 16 **Q** And this means -- when you have a label like this, the  
02:27:13 17 information would show you that the prescription was filled;  
02:27:15 18 right?

02:27:16 19 **A** Right, because there's a visual verify pharmacist on  
02:27:19 20 that.

02:27:19 21 **Q** And who's that?

02:27:20 22 **A** That's me.

02:27:22 23 **Q** And you also did the four point on this one; right?

02:27:25 24 **A** I did.

02:27:26 25 **Q** And here we have a patient pay and also shows a

**Militello - Direct/Majoras**

02:27:30 1 Number, \$21.72?

02:27:33 2 **A** Correct.

02:27:35 3 **Q** Anything about this prescription, looking at the front  
02:27:38 4 and the back of it, that raises some concerns to you as you  
02:27:43 5 look back to 2013?

02:27:46 6 **A** No.

02:28:05 7 **Q** So if I were to tell you that on the same day you also  
02:28:08 8 filled a prescription for diazepam, a 10-milligram, one --  
02:28:17 9 one dose, a single pill for one day, would that surprise  
02:28:19 10 you?

02:28:19 11 **A** No.

02:28:20 12 **Q** Why not?

02:28:21 13 **A** Again, that's probably for a dose prior to a  
02:28:24 14 procedure.

02:28:26 15 **Q** Is that something -- is this type of combination of  
02:28:31 16 medication something that you see in what you're doing as a  
02:28:35 17 pharmacist at Walmart?

02:28:35 18 **A** Yeah, I see it quite often.

02:28:37 19 **Q** And what about specifically with respect to dentists?

02:28:40 20 **A** Yes, quite often with dentists.

02:28:44 21 **Q** So if someone were to say to you that there are red  
02:28:47 22 flags because of the combination of the benzo and the  
02:28:55 23 opioid, and the fact that the patient paid cash, what's your  
02:28:57 24 response to that?

02:28:58 25 **A** The patient paying cash, they were born in 1985 I can

**Militello - Direct/Majoras**

02:29:03 1 see, so in 2013, that may be a patient that did not have  
02:29:09 2 prescription insurance. So that really -- this prescription  
02:29:13 3 and that combination would not give me any red flag.

02:29:17 4 **Q** So didn't you write everything you just said on the  
02:29:20 5 prescription back when you filled it?

02:29:21 6 **A** Because when I was evaluating the prescription, it was  
02:29:24 7 second nature to me to know those facts.

02:29:27 8 **Q** When you say second nature, what's that based on?

02:29:31 9 **A** My experience as a pharmacist and what I know about  
02:29:34 10 those medications, I guess.

02:29:40 11 **Q** Okay. Again, switching topics a bit. I'd like to  
02:29:43 12 talk to you a little bit about when do you not fill a  
02:29:45 13 prescription. Is there a phrase that you use at Walmart as  
02:29:48 14 a pharmacist for when you do not -- when you decide the  
02:29:51 15 prescription should not be filled?

02:29:52 16 **A** We consider that a refusal to fill.

02:29:54 17 **Q** Does that also include instances where you believe  
02:29:57 18 there's a forgery?

02:30:00 19 **A** Oh, yes. Yeah.

02:30:02 20 **Q** But also times when you're just uncomfortable using  
02:30:06 21 your corresponding responsibility and judgment; is that  
02:30:07 22 right?

02:30:07 23 **A** Yes.

02:30:17 24 **Q** What do you do with a prescription when you refuse to  
02:30:20 25 fill it? Let's start a forged prescription, one that you

**Militello - Direct/Majoras**

02:30:24 1 think might be forged. What do you do with that  
02:30:26 2 prescription?

02:30:26 3 **A** If it's a forged prescription, we would have to have  
02:30:28 4 contact with the doctor, and we would have to have the  
02:30:31 5 doctor confirm to us in writing that that was a forged  
02:30:34 6 prescription. And in that case, the prescription would then  
02:30:37 7 be confiscated from the patient.

02:30:41 8 **Q** And did you do anything else once you were -- you had  
02:30:45 9 the belief that it was forged?

02:30:47 10 **A** I mean, certainly we would contact law enforcement,  
02:30:50 11 let them know that as soon as the doctor has confirmed it.

02:30:53 12 **Q** What about a situation where you just were  
02:30:57 13 uncomfortable filling it because you were not sure the  
02:30:59 14 prescription was appropriately prescribed for legitimate  
02:31:02 15 medical purpose? What would you do with those  
02:31:04 16 prescriptions?

02:31:06 17 **A** With those prescriptions, I mean, we were not allowed  
02:31:09 18 to just keep the prescription simply because we had a belief  
02:31:13 19 in that manner. So the prescription would have to be  
02:31:17 20 returned to the patient.

02:31:19 21 **Q** And do you do anything with the prescription so that  
02:31:21 22 if the patient tries to fill it somewhere else, there's a  
02:31:25 23 reference to it that they stopped at your pharmacy first?

02:31:30 24 **A** So very often, there's maybe a sticker that had to be  
02:31:36 25 peeled off or there may be some pharmacist writing on the

**Militello - Direct/Majoras**

02:31:40 1 front of that prescription that would indicate to a pharmacy  
02:31:42 2 that was getting it next that that has already been dropped  
02:31:44 3 off at a pharmacy and not filled.

02:31:52 4 **Q** You've heard of the phrase blanket refusal to fill?

02:31:54 5 **A** I have.

02:31:55 6 **Q** What is that?

02:31:55 7 **A** Blanket refusal is when the pharmacist has taken it  
02:31:59 8 upon themselves to refuse filling for a prescriber in  
02:32:03 9 general.

02:32:04 10 So you have a prescriber you get prescriptions for.  
02:32:06 11 You don't feel that they prescribe in a manner that is  
02:32:11 12 appropriate so you decide that you are not going to fill  
02:32:14 13 controlled prescriptions for that prescriber.

02:32:16 14 **Q** And have you done that within your time as a  
02:32:18 15 pharmacist at Walmart?

02:32:19 16 **A** I did do it, yes.

02:32:20 17 **Q** And, so, are there situations where you just have  
02:32:24 18 concluded anything that comes in from a particular  
02:32:26 19 prescriber, you're not going to fill?

02:32:28 20 **A** In the case where I did it, it was that I was -- I was  
02:32:32 21 trying to communicate with the prescriber and I was not  
02:32:34 22 getting sufficient feedback from the prescriber, I was not  
02:32:38 23 getting calls back from the prescriber themselves, so I felt  
02:32:42 24 like I wasn't getting information that I was requesting and  
02:32:47 25 so it was persistent. So that's why I had put the blanket



**Militello - Direct/Majoras**

02:32:51 1 refusal in.

02:32:51 2 **Q** And when you did that, do you know whether that  
02:32:56 3 complied with Walmart policies at the time?

02:32:58 4 **A** I'm sorry, if --

02:32:59 5 **Q** Do you know whether that complied with Walmart  
02:33:01 6 policies at the time?

02:33:02 7 **A** It did, yes.

02:33:06 8 **Q** You're also -- are you familiar with the phrase  
02:33:09 9 corporate blocks?

02:33:10 10 **A** I am.

02:33:10 11 **Q** Have you ever felt you needed a corporate block to  
02:33:12 12 help you decide whether to fill a prescription from a  
02:33:16 13 particular prescriber?

02:33:19 14 **A** It didn't really come down to whether I needed it. It  
02:33:22 15 is a situation where if that prescriber is blocked  
02:33:25 16 corporately, we are not permitted to fill that prescription.

02:33:30 17 **Q** At any point in time in your career at Walmart, if you  
02:33:34 18 were to make decision after decision that you're not going  
02:33:37 19 to fill a prescription from a particular provider, did you  
02:33:41 20 feel comfortable doing that?

02:33:43 21 **A** Yes. If I felt that situation had arisen, yes.

02:33:47 22 **Q** Ever get any push back from anyone that you shouldn't  
02:33:50 23 be doing it that way?

02:33:51 24 **A** No.

02:33:52 25 **Q** Last topic I'd like to talk to you about is drug

**Militello - Direct/Majoras**

02:33:55 1 disposal.

02:33:57 2 The jury's heard a bit about this issue from other  
02:34:04 3 witnesses so I'd like to -- like you to help explain what  
02:34:07 4 Walmart has done.

02:34:08 5 What is Dispose RX?

02:34:10 6 **A** Dispose RX is a pre-packaged powder with directions  
02:34:14 7 typed on the side that tells the patient if they have  
02:34:17 8 remaining opioid medication or benzodiazapine or some type  
02:34:21 9 of medication left that they don't want in their house, that  
02:34:25 10 this powder can be added with warm water and then shaken up,  
02:34:29 11 it deactivates the product and it can be disposed of.

02:34:40 12 **Q** Why is Walmart offering that product?

02:34:43 13 **A** It's a service to the patient to be able to get rid of  
02:34:49 14 medications that they don't want anyone else having access  
02:34:53 15 to in a responsible manner, and there are a lot of patients  
02:34:59 16 that are very appreciative of Dispose RX.

02:35:01 17 **Q** To go back to your drawing we had of your pharmacy,  
02:35:04 18 there was a consulting window.

02:35:05 19 **A** Yes.

02:35:06 20 **Q** Is there any consulting that you do with your patients  
02:35:09 21 about Dispose RX?

02:35:10 22 **A** Yes.

02:35:10 23 **Q** What's that?

02:35:11 24 **A** I go through just what I just told you and that  
02:35:15 25 they're getting an opioid prescription filled. If you don't

**Militello - Direct/Majoras**

02:35:17 1 take all that medication, which we want you to take it for  
02:35:20 2 the least amount of time possible at the lowest dose that's  
02:35:24 3 treating your pain, and if you have tablets remaining after  
02:35:27 4 that, that this Dispose RX can be utilized to help get rid  
02:35:32 5 of that medication.

02:35:32 6 **Q** How much does a Dispose RX kit cost?

02:35:35 7 **A** It does not cost.

02:35:38 8 MR. MAJORAS: Thank you, Ms. Militello.

02:35:40 9 Your Honor, I pass the witness.

02:35:41 10 THE COURT: Okay. I assume no questions from  
02:35:44 11 CVS or Walgreens?

02:35:46 12 MR. STOFFELMAYR: No, Your Honor.

02:35:47 13 MR. DELINSKY: No.

02:35:47 14 THE COURT: Okay.

02:35:47 15

16

17

18

19

20

21

22

23

24

25

**Militello - Cross/Lanier**

02:35:47 1 CROSS-EXAMINATION OF LORI MILITELLO

02:36:25 2 BY MR. LANIER:

02:36:25 3 **Q** All right.

02:36:27 4 My big question for you today, I want to make sure I'm  
02:36:32 5 pronouncing your name right. Militello?

02:36:36 6 **A** Perfect.

02:36:37 7 **Q** Okay.

02:36:38 8 Ms. Militello, my name is Mark Lanier. I'm going to  
02:36:40 9 take you on cross-examination for a while. I've done a  
02:36:42 10 little road map so that you've got an idea of where we're  
02:36:46 11 going and the jury does as well.

02:36:48 12 I want to talk to you about some of the patients, and  
02:36:53 13 I want to talk to you about some of the stores, and then I  
02:36:56 14 want to talk to you about some of the policies.

02:36:58 15 Okay?

02:36:58 16 **A** Okay.

02:36:59 17 **Q** Let's start with patients.

02:37:02 18 So I had a chance to get our folks to run through the  
02:37:05 19 dispensing data, the data that y'all provided to us, your  
02:37:10 20 company provided to us, about the dispensing that you've  
02:37:14 21 done and others have done in your stores. Okay?

02:37:16 22 **A** Okay.

02:37:17 23 **Q** So, for example, the Eastlake store. Do you know how  
02:37:24 24 many unique patients you and other pharmacists have serviced  
02:37:31 25 over the last, I think we have 14 years or so of dispensing

**Militello - Cross/Lanier**

02:37:35 1 data?

02:37:36 2 **A** No, I don't.

02:37:38 3 **Q** You talk about how important it is that you know your  
02:37:41 4 patients and that you've gotten to know them. Would you be  
02:37:45 5 surprised to know that y'all have filled prescriptions for  
02:37:48 6 11,628 different people?

02:37:53 7 **A** I did not know that number.

02:37:55 8 **Q** All right.

02:37:55 9 And would you agree with me there's no way you know  
02:37:58 10 all of those 11,628 people?

02:38:01 11 **A** There is no way.

02:38:02 12 **Q** All right.

02:38:03 13 And there have been other stores you've worked at. I  
02:38:06 14 think you worked at Walmart 2197 for a while?

02:38:09 15 **A** I don't know the store number, but. . .

02:38:12 16 **Q** It's another one in the county.

02:38:14 17 **A** Okay.

02:38:14 18 **Q** And 13,200 different people there. You wouldn't know  
02:38:20 19 all of those either, would you?

02:38:22 20 **A** I certainly wouldn't.

02:38:23 21 **Q** And if we just counted the different doctors that have  
02:38:25 22 filled prescriptions there, at the Eastlake store that we  
02:38:30 23 were talking about, 5,168 different prescribers, there's no  
02:38:37 24 way you know all of those. Fair?

02:38:39 25 **A** Not.

**Militello - Cross/Lanier**

02:38:40 1 Q Okay.

02:38:41 2 So when we talk about knowing the doctors and the  
02:38:44 3 patients, would it be fair to say that there are some you do  
02:38:48 4 know, but there are many you do not know. Fair?

02:38:54 5 A Over the course of those years, yeah, that's fair.

02:38:56 6 Q And that's magnified if the jury understands that  
02:39:03 7 you've worked in so many different Walmarts, you don't --  
02:39:06 8 you've lost count.

02:39:07 9 Fair?

02:39:08 10 A Yeah.

02:39:08 11 The stores in other areas, I can't account for their  
02:39:12 12 patients and doctors.

02:39:13 13 Q What I mean by that, though, is you've been assigned,  
02:39:18 14 some people call it floating, others call it a temporary,  
02:39:22 15 but you've been assigned to go to different Walmarts?

02:39:24 16 A Um-hmm.

02:39:25 17 Q Over your years. And some of them, you work in for a  
02:39:28 18 day, and some of them a week, and some of them a month, but  
02:39:31 19 you get -- you float around to different Walmarts.

02:39:33 20 Fair?

02:39:36 21 A I mean, I work steadily in Eastlake. So that's my  
02:39:39 22 steady store, but I have floated to different stores to help  
02:39:43 23 out, yes.

02:39:43 24 Q Yeah.

02:39:44 25 In your deposition, when asked how many different

**Militello - Cross/Lanier**

02:39:47 1 Walmart pharmacies have you worked in, your answer was I  
02:39:50 2 couldn't give you an accurate account because I've worked at  
02:39:54 3 various pharmacies that need extra help or floated out to  
02:39:58 4 pharmacies, and not just in Northeast Ohio, but all over the  
02:40:02 5 State of Ohio; right?

02:40:03 6 **A** Correct.

02:40:04 7 **Q** And so not only might you not know all of the doctors  
02:40:07 8 and patients in your store, but as you, or others float  
02:40:12 9 around, you're going to be hit with patients and doctors  
02:40:14 10 you've never heard of before.

02:40:16 11 Fair?

02:40:16 12 **A** Yes.

02:40:17 13 **Q** All right.

02:40:18 14 While we're dealing with patients -- by the way, how  
02:40:23 15 did I do on that picture?

02:40:24 16 **A** Great.

02:40:25 17 **Q** All right. That's you; right?

02:40:26 18 **A** That's me.

02:40:26 19 **Q** It looks like I cropped out your husband. You go tell  
02:40:30 20 him, he got cut. All right?

02:40:34 21 While we're on this subject, I want to put into a  
02:40:40 22 little fuller perspective an answer you gave earlier about  
02:40:44 23 contacting other pharmacies and pharmacists. Okay?

02:40:48 24 **A** Okay.

02:40:48 25 **Q** Now, you did give a deposition in this case a few

**Militello - Cross/Lanier**

02:40:51 1 months back; right?

02:40:52 2 **A** Correct.

02:40:53 3 **Q** And you took the same oath that His Honor gave to you  
02:41:00 4 to tell the truth. And you understood that we were getting  
02:41:02 5 testimony from you that we could hold you to if you took the  
02:41:06 6 stand here today; right?

02:41:07 7 **A** Correct.

02:41:07 8 **Q** All right.

02:41:07 9 So in that regard, do you recall being asked if you  
02:41:10 10 know any of the other pharmacists that work at the other  
02:41:13 11 pharmacies nearby? And you said, "I know them to talk to  
02:41:18 12 them; I don't know them personally."

02:41:20 13 Fair?

02:41:21 14 **A** Fair.

02:41:22 15 **Q** And then the question, "Under what circumstances would  
02:41:26 16 you know them to talk to them?"

02:41:29 17 Do you remember what answer you gave?

02:41:31 18 **A** I do not.

02:41:31 19 **Q** You said, "We often talk during transfers of  
02:41:37 20 prescriptions."

02:41:39 21 Remember that?

02:41:39 22 **A** Yes.

02:41:40 23 **Q** A transfer of prescription means you're getting  
02:41:45 24 somebody that used to be filled at another store, or they're  
02:41:49 25 getting somebody that you used to be filled at your store;



**Militello - Cross/Lanier**

02:41:52 1 right?

02:41:52 2 **A** Right.

02:41:52 3 **Q** And then when asked, did you ever talk to them about  
02:41:57 4 anything other than transfers of prescriptions, your answer  
02:42:01 5 was, at this point, rarely anything about transfers.

02:42:07 6 Is that still your testimony today?

02:42:09 7 MR. MAJORAS: Objection. Improper  
02:42:11 8 impeachment. It's consistent.

02:42:13 9 THE COURT: Overruled.

02:42:17 10 BY MR. LANIER:

02:42:17 11 **Q** Is it?

02:42:18 12 **A** We did talk during transfers, but we also -- I would  
02:42:23 13 also discuss with them, or maybe another pharmacist in my  
02:42:28 14 store would discuss with them and pass it along to me. So  
02:42:31 15 we did have a relationship with other pharmacists.

02:42:32 16 **Q** But the answer, "Did you ever talk" -- here, let me  
02:42:36 17 show it to you so you've got a chance to see it. It's on  
02:42:39 18 Page 83.

02:42:41 19 "Under what circumstances would you know them to talk  
02:42:43 20 to them?

02:42:44 21 "We often talked during transfers of prescriptions.

02:42:47 22 "And do you remember talking to them about anything  
02:42:50 23 other than transfers of prescriptions?

02:42:52 24 "At this point, rarely anything about transfers."

02:42:55 25 Is that still your testimony today?

**Militello - Cross/Lanier**

02:42:57 1 **A** Yes, because at this point, we do barely talk to them  
02:43:04 2 about anything but transfers.

02:43:06 3 **Q** But just then later, just a couple questions or two  
02:43:09 4 later, "Have you ever talked to any of these pharmacists  
02:43:11 5 about problems with certain patients?"

02:43:14 6 Your answer was, "These pharmacists know" -- and those  
02:43:17 7 may have been the ones right close to you, right?

02:43:21 8 **A** Um-hmm.

02:43:21 9 **Q** "Have you ever talked with any other pharmacists about  
02:43:24 10 prescribers?

02:43:27 11 "Today? No.

02:43:28 12 "What about since you started working at Store 1863?  
02:43:31 13 Have you ever talked to other pharmacists about  
02:43:34 14 prescribers?"

02:43:35 15 You said, "I have.

02:43:39 16 "What did you talk to them about?

02:43:41 17 "I don't recall at this point.

02:43:45 18 "Do you recall anything about those conversations?

02:43:46 19 "Not really at this point."

02:43:48 20 Is that still your testimony today, ma'am?

02:43:51 21 **A** Yes. I don't remember specific conversations.

02:43:54 22 **Q** You were asked, "Do you remember recall talking to  
02:43:58 23 them about, for example, forged or altered prescriptions?"

02:44:02 24 And you said, "I don't.

02:44:05 25 "Do you ever recall talking to them about prescribing

**Militello - Cross/Lanier**

02:44:10 1 patterns?

02:44:10 2 "Potentially prescribing patterns.

02:44:13 3 "And who would you have talked to.

02:44:14 4 "I don't know.

02:44:14 5 "Do you recall generally what was discussed?

02:44:16 6 "I do not.

02:44:17 7 "Do you recall discussing with any of these

02:44:20 8 pharmacists opioids or opioid prescriptions?

02:44:22 9 "Potentially at one point.

02:44:27 10 "Do you recall who?

02:44:29 11 "No."

02:44:30 12 Is that still your testimony today?

02:44:32 13 **A** Yes.

02:44:33 14 **Q** All right.

02:44:33 15 So when you talked in response to Mr. Majoras'

02:44:38 16 questions about speaking with other pharmacists frequently,

02:44:41 17 is it safe for us to assume your answers under oath were

02:44:44 18 correct and you speak to them frequently about transfers of

02:44:48 19 prescriptions, maybe once about opioids?

02:44:52 20 **A** We would speak to pharmacists about transfers, but

02:44:55 21 also if we had a concern, we would call other pharmacies in

02:44:58 22 the area regarding the concern.

02:45:00 23 **Q** Well, now you've just said we at that point, and I can

02:45:03 24 only ask you about you personally. So is your personal

02:45:08 25 testimony the same as it was several months ago when you

**Militello - Cross/Lanier**

02:45:10 1 were under oath?

02:45:11 2 **A** Yes.

02:45:12 3 **Q** Thank you.

02:45:13 4 Now, while we're dealing with patients, I want to do  
02:45:17 5 one more thing. You looked at a number of prescriptions  
02:45:20 6 with Mr. Majoras, but I'd like to look at a few others,  
02:45:26 7 please. I'm going to have handed up to you Plaintiffs'  
02:45:35 8 Exhibit 17572.

02:45:40 9 Do you have that, ma'am?

02:45:43 10 **A** I do.

02:45:44 11 **Q** And it's really small print so I'm going to have to  
02:45:46 12 blow it up pretty good, and we'll have to move it around on  
02:45:52 13 the screen a little to make it work. But this is dealing  
02:45:57 14 with a doctor, a prescriber, named Trevor Levin.

02:46:03 15 **A** Um-hmm.

02:46:04 16 **Q** Do you see that?

02:46:04 17 **A** I do.

02:46:05 18 **Q** And you remember him, don't you?

02:46:06 19 **A** I do.

02:46:12 20 **Q** Trevor Levin is someone that, in the comments here,  
02:46:15 21 you've got -- by the way, this is your main store, Eastlake;  
02:46:18 22 right?

02:46:18 23 **A** It is.

02:46:19 24 **Q** Prescriber is prescribing large amounts of  
02:46:24 25 hydrocodone, Soma, Valium, for the same patient. Is not

**Militello - Cross/Lanier**

02:46:29 1 cooperative in having discussions about patient therapy.

02:46:34 2 Not comfortable filling prescriptions from this doctor at  
02:46:38 3 the quantities he prescribes.

02:46:41 4 Do you see that?

02:46:41 5 **A** I see that.

02:46:42 6 **Q** And so we see as of June 7th, 2018, you were not being  
02:46:50 7 comfortable filling those prescriptions; right?

02:46:57 8 **A** I don't know who made the comment.

02:46:58 9 **Q** Okay. So maybe you, maybe not you. Fair?

02:47:00 10 **A** I don't know.

02:47:02 11 **Q** But we do know that if we keep looking, a few weeks  
02:47:07 12 before, at the store in Mentor, the same note of this doctor  
02:47:13 13 is made that his specialty is as a hormone fatigue and rehab  
02:47:19 14 center, not as pain management, that he routinely writes for  
02:47:25 15 cocktail of commonly abused drugs or combo, oxy, Soma,  
02:47:32 16 Valium, with no other non-controlled substance prescriptions  
02:47:36 17 presented by patient.

02:47:38 18 Do you see that as well?

02:47:39 19 **A** I see that.

02:47:40 20 **Q** That he's confrontational when asked questions and  
02:47:44 21 concerns relating to the patient care.

02:47:46 22 Do you see that also?

02:47:53 23 **A** Um-hmm, yes.

02:47:54 24 **Q** All right.

02:47:55 25 And the reason I'm bringing this up is because we've

**Militello - Cross/Lanier**

02:47:57 1 got some other prescriptions that were filled by this doctor  
02:48:00 2 or filled of this doctor that I'd like to talk to you about.  
02:48:06 3 So I'm handing you Plaintiffs' Exhibit 21391, which is a  
02:48:15 4 prescription, and it's one that was refused to fill  
02:48:26 5 March 6th, 2017, over a year earlier.

02:48:29 6 Do you see this?

02:48:29 7 **A** I see it.

02:48:32 8 **Q** Now, is this your prescription?

02:48:36 9 **A** It is not, no.

02:48:39 10 **Q** We've got your name on this at one point. Let's look  
02:48:43 11 at the OARRS report together.

02:48:47 12 This is a classic OARRS report, isn't it?

02:48:50 13 **A** Yes.

02:48:52 14 **Q** And help the jury walk through some of this OARRS  
02:48:55 15 report, please.

02:48:57 16 First of all, we've got the prescriber, and that's  
02:49:02 17 this Trevor Levin fellow; right?

02:49:05 18 **A** Right.

02:49:06 19 **Q** And we've got here, if we blow this up a little bit  
02:49:09 20 more, we've got him writing prescriptions, these three, all  
02:49:14 21 on the same day. True?

02:49:16 22 **A** Yes.

02:49:17 23 **Q** And it looks like these daily medicines, at least  
02:49:22 24 these are 60 tablets; is that right?

02:49:25 25 **A** Correct. On the top, oxycodone. It looks like it was

**Militello - Cross/Lanier**

02:49:28 1 60.

02:49:29 2 **Q** Yeah. In fact, we can see it here.

02:49:31 3 He's written a prescription to be filled for 60  
02:49:35 4 oxycodone, 90 carisoprodol?

02:49:44 5 **A** Carisoprodol.

02:49:44 6 **Q** That's exactly what I was not able to say.

02:49:50 7 Carisoprodol.

02:49:50 8 Now, this is a patient history report and yet, the  
02:49:53 9 patient's got two different numbers. Do you know why that  
02:49:58 10 is?

02:49:58 11 **A** No, I don't.

02:49:59 12 **Q** All right.

02:50:00 13 We've got oxycodone, OxyContin, and carisoprodol.

02:50:05 14 What kind of a drug is carisoprodol?

02:50:08 15 **A** It is a muscle relaxer.

02:50:15 16 **Q** So that's part of the trinity cocktail. You got two  
02:50:17 17 of the three, don't you?

02:50:18 18 **A** Correct.

02:50:19 19 **Q** If you look at the next page, not only do we have --  
02:50:22 20 and we're going to come back to these dates -- February,  
02:50:26 21 oxycodone and OxyContin, 30 days of each -- or one and 60 of  
02:50:33 22 the other, but if you go back to the next page of this  
02:50:36 23 patient history, you've got diazepam for 90 days, is that --  
02:50:44 24 or quantity 90. So that's 30 days. This is days; right?

02:50:48 25 **A** Right.

**Militello - Cross/Lanier**

02:50:49 1 Q So you've got -- and diazepam, that's the third part  
02:50:53 2 of the trinity. That's the benzo, isn't it?

02:50:58 3 A Yes, it is a benzodiazapine.

02:50:59 4 Q So you've got, for this person, you've got for this  
02:51:07 5 person prescriptions written all on the same day for the  
02:51:14 6 trinity, don't you?

02:51:15 7 A Yes.

02:51:17 8 Q And these were filled at Walmart, weren't they?

02:51:22 9 A Yes.

02:51:24 10 Q And it's not just that February filling, but you can  
02:51:28 11 go back and look, February 5th, and you've got another  
02:51:34 12 oxycodone. And this time, 150 tablets for 30 days; correct?

02:51:40 13 A Yes.

02:51:41 14 Q So you've got a 30-day prescription for oxy filled and  
02:51:48 15 then 20 days later you've got another 30 days filled. And  
02:51:53 16 this is in the midst of getting the trinity filled; correct?

02:51:57 17 A The oxycodone 30 is an immediate release tablet, and  
02:52:01 18 the oxycodone that was filled on the 20th of February was an  
02:52:06 19 extended-release oxycodone.

02:52:07 20 Q Um-hmm.

02:52:07 21 So you've got an extended release and an immediate  
02:52:11 22 release being written and filled at the same time?

02:52:13 23 A Yeah, that's not unusual.

02:52:15 24 Q You don't consider that a red flag?

02:52:17 25 A No.



**Militello - Cross/Lanier**

02:52:25 1 Q Hum.

02:52:26 2 Oxycodone, we go back to the 16th, on January 16th  
02:52:30 3 you've got filled -- or written the same day, two different  
02:52:37 4 oxycodone and another OxyContin for another 90 days.

02:52:41 5 Do you see that as well?

02:52:43 6 A I don't see the 90-day.

02:52:45 7 Q I'm sorry, 30 days. It's 30, 60, 90. My brain is  
02:52:50 8 short-circuited. For 30 days each.

02:52:53 9 Do you see that?

02:52:53 10 A Yes.

02:52:54 11 Q And we've also got, if we want to keep going back, a  
02:52:58 12 filling that took place on January 16th and January 8th, all  
02:53:05 13 within that same month, of the other two drugs in the  
02:53:08 14 trinity; right?

02:53:09 15 A Yes.

02:53:12 16 Q All filled at Walmart, same store; correct?

02:53:17 17 A Correct.

02:53:18 18 Q And we can go back and we can look even further and  
02:53:22 19 we're going to see earlier in January another 30 days. So  
02:53:26 20 now we've got for oxycodone 30, we've got 90 tablets filled  
02:53:33 21 in less than two months. We've got 90 days worth, excuse  
02:53:38 22 me, not tablets; right?

02:53:39 23 A You're looking at the oxycodone immediate release and  
02:53:44 24 oxycodone extended release. So those are two different  
02:53:52 25 formulations.

**Militello - Cross/Lanier**

02:53:53 1 **Q** Okay.

02:53:53 2 **A** So that would not be looked at in that manner. We  
02:53:57 3 would look collectively at the immediate release and we  
02:53:59 4 would look collectively at the extended release.

02:54:01 5 **Q** Well, you can continue to look and go through this  
02:54:04 6 list and you've got -- look at just December. Just in the  
02:54:09 7 month of December the fills, including another 30 for oxy  
02:54:16 8 40's, another 30 for oxy '60s, diazepam 10's, oxycodone 21,  
02:54:26 9 carisoprodol for 30, and diazepam for another 7, all, same  
02:54:32 10 doctor; all, same month; all, same store, filled at Walmart.

02:54:39 11 True?

02:54:39 12 **A** Correct.

02:54:44 13 **Q** And we can go back to November. And in November we're  
02:54:48 14 going to see the same pattern filled (indicating).

02:55:00 15 Correct?

02:55:02 16 **A** Yeah. I mean, we're seeing the diazepam are being  
02:55:07 17 filled. . . for some of them are 20 days, some of them are  
02:55:19 18 7, I see.

02:55:19 19 So we also look at day supply in that instance.

02:55:22 20 **Q** Right.

02:55:22 21 So if you look, for example, in December, you've got  
02:55:24 22 the diazepam for 20 and also the diazepam for 7. So you've  
02:55:28 23 got 27 days in December of diazepam; right?

02:55:31 24 **A** Okay.

02:55:31 25 **Q** And you can go back to October, and you're going to

**Militello - Cross/Lanier**

02:55:36 1 see the same cocktail, the same trinity being filled at  
02:55:41 2 Walmart in October, aren't you?

02:55:42 3 **A** Yes.

02:55:42 4 **Q** And you're going to see the same trinity being filled  
02:55:45 5 by Walmart in September, aren't you?

02:55:48 6 **A** Yes.

02:55:49 7 **Q** And the same trinity being filled by Walmart in  
02:55:53 8 August.

02:55:54 9 True?

02:55:54 10 **A** Correct.

02:55:54 11 **Q** And the same trinity being filled by Walmart, with a  
02:56:01 12 few extras, in July.

02:56:03 13 True?

02:56:03 14 **A** Correct.

02:56:06 15 **Q** I mean, in July, you've got oxy 60, 30 days. You've  
02:56:11 16 got oxycodone 30's for 30 days. You've got OxyContin 40's  
02:56:17 17 for 30 days, and OxyContin 60 for 30 days.

02:56:23 18 They've got 120 days of oxy coming out that month,  
02:56:27 19 don't they?

02:56:29 20 **A** He was -- he was using them in combination, so yes, he  
02:56:33 21 did.

02:56:33 22 **Q** In combination with the rest of the trinity. You've  
02:56:36 23 still got the carisoprodol and the diazepam; right?

02:56:39 24 **A** That's correct.

02:56:41 25 **Q** And we could keep going back, but suffice it to say

**Militello - Cross/Lanier**

02:56:46 1 you've got the same issue happening. Here, look at May  
02:56:49 2 (indicating).

02:56:50 3 May's a monster month, isn't it?

02:56:59 4 Looking at April (indicating).

02:57:08 5 At some point, don't you think the alarm should have  
02:57:11 6 sounded sooner?

02:57:12 7 **A** We had conversations with the doctor multiple times  
02:57:14 8 about that patient. I also was familiar with that patient.

02:57:24 9 **Q** And so this doctor is prescribing this trinity and  
02:57:29 10 we're getting early refills, and we're on a lot of drugs for  
02:57:35 11 well over a year before you finally said I'm not going to  
02:57:42 12 fill any more of these.

02:57:43 13 True?

02:57:44 14 **A** He wasn't getting early refills.

02:57:46 15 **Q** Ma'am, are you sure?

02:57:47 16 **A** Yeah.

02:57:48 17 **Q** Define early refill by Walmart's standards.

02:57:52 18 **A** Well, he was taking combinations of oxycodone. So he  
02:57:57 19 was taking extended-release formulations at a 40 and a  
02:58:00 20 60-milligram to meet his pain need, and he was taking  
02:58:05 21 30-milligram immediate release.

02:58:09 22 **Q** Um-hmm.

02:58:10 23 **A** So those prescriptions were not filled early, per se;  
02:58:16 24 they were just being used in combination.

02:58:19 25 **Q** Well, you say that. If you look at the days, I think

**Militello - Cross/Lanier**

02:58:22 1 it might show a different story, but maybe I'm wrong. So  
02:58:26 2 let's look at it.

02:58:31 3 You've got this oxycodone 20 milligrams on the 25th of  
02:58:39 4 February; right?

02:58:40 5 **A** Correct.

02:58:41 6 **Q** You've got OxyContin 60 on the 20th of February?

02:58:47 7 **A** Correct.

02:58:48 8 **Q** You've got oxycodone 30 on the 5th of February. Is  
02:58:53 9 that extended release or immediate?

02:58:54 10 **A** That's immediate.

02:58:55 11 **Q** And oxycodone 40. Is that extended or immediate?

02:58:59 12 **A** That's extended.

02:59:01 13 **Q** And OxyContin 60. Is that extended or immediate?

02:59:05 14 **A** Extended.

02:59:09 15 **Q** And then, again, its oxycodone 30. That is. . .

02:59:15 16 **A** Filled on January 7th and he filled it again on  
02:59:18 17 February 5th.

02:59:19 18 **Q** And so that's not overlapping in your mind because  
02:59:23 19 you're within a day or two; right?

02:59:24 20 **A** Right. We would not take it directly up to the day.

02:59:28 21 **Q** And then that is oxycodone 20, is that immediate?

02:59:32 22 **A** Extended.

02:59:38 23 **Q** OxyContin 60. Immediate?

02:59:40 24 **A** Extended.

02:59:42 25 **Q** So you've got those two extended happening within

**Militello - Cross/Lanier**

02:59:46 1 five days of each other?

02:59:49 2 **A** Right.

02:59:50 3 Dr. Levin wrote those prescriptions on the same day  
02:59:53 4 for him to use in combination to treat his pain.

03:00:02 5 **Q** Now, Dr. Levin eventually becomes a doctor that you  
03:00:06 6 quit filling for.

03:00:07 7 True?

03:00:08 8 **A** That is correct.

03:00:08 9 **Q** All right. Let's move down the road. I guess with  
03:00:12 10 patients -- it's 3 o'clock. Oh, oh.

03:00:16 11 MR. LANIER: Am I supposed to quit, Judge?  
03:00:19 12 I'm moving to the next stop.

03:00:20 13 What do you want me to do? I'm great moving on. I'm  
03:00:23 14 great quitting.

03:00:24 15 THE COURT: Well, about how long -- how much  
03:00:27 16 longer is your next stop going to be?

03:00:29 17 MR. LANIER: My next stop, I bet I can do it  
03:00:31 18 in about 10 to 12 minutes.

03:00:32 19 THE COURT: All right.

03:00:33 20 MR. LANIER: Maybe --

03:00:34 21 THE COURT: Why don't we complete that stop,  
03:00:36 22 and then we'll break for the afternoon.

03:00:39 23 BY MR. LANIER:

03:00:39 24 **Q** All right.

03:00:40 25 Ma'am, what I'd like do is look at stores real quick.

**Militello - Cross/Lanier**

03:00:43 1 Okay?

03:00:43 2 **A** Okay.

03:00:43 3 **Q** And I'll try to make this stop a brief one. You know,  
03:00:49 4 the jury's not heard this yet. Wait until the end of trial  
03:00:52 5 to hear this stuff. What an over 20 store is; right?

03:00:57 6 **A** I'm not familiar with that term.

03:00:59 7 **Q** You're not familiar with the -- tell the jury how big  
03:01:02 8 the bottles are that bring -- that have these drugs in them.

03:01:06 9 What are the size of the bottles, the pill jars?

03:01:10 10 MR. MAJORAS: Objection; form to a particular  
03:01:12 11 prescription pill.

03:01:14 12 MR. LANIER: Well, I'll be more specific.

03:01:16 13 BY MR. LANIER:

03:01:17 14 **Q** Oxycodone 5/325 milligrams?

03:01:24 15 **A** Um-hmm, yes.

03:01:24 16 **Q** Yeah. What's -- what is that -- how many pills in a  
03:01:28 17 bottle?

03:01:28 18 **A** 100.

03:01:30 19 **Q** Now, did you know that your company decided that  
03:01:35 20 stores should not get over 20 of those bottles within a  
03:01:40 21 certain time period? I think it was either weekly or twice  
03:01:44 22 a week or something like that -- or twice a month or  
03:01:46 23 something like that.

03:01:47 24 MR. MAJORAS: Objection. Foundation.  
03:01:48 25 Distribution.

**Militello - Cross/Lanier**

03:01:49 1 MR. LANIER: No, it's not distribution. This  
03:01:50 2 is --

03:01:51 3 THE COURT: Overruled. Overruled.

03:01:52 4 BY MR. LANIER:

03:01:52 5 **Q** Did you know about that, ma'am?

03:01:53 6 **A** No, I was not aware of that.

03:01:55 7 **Q** All right. Let me ask you more specifically about  
03:01:58 8 your store IN Eastlake.

03:02:02 9 Did you know out of all of the Walmart stores around  
03:02:04 10 the country -- I'm going to show you Plaintiffs'  
03:02:07 11 Exhibit 20889 -- did you know out of all of the Walmart  
03:02:15 12 stores around the country in 2012, your Eastlake, Ohio,  
03:02:19 13 store was noted for having a quantity of 37, an order -- or  
03:02:27 14 an amount which exceeded the 20 bottles?

03:02:32 15 Did you know about that?

03:02:32 16 **A** No.

03:02:34 17 **Q** Did you know that your store was not only there, but  
03:02:40 18 repeatedly is one of the top volume stores for oxy in the  
03:02:45 19 entire nation?

03:02:47 20 **A** No.

03:03:03 21 **Q** So while you were working at Eastlake, nobody ever  
03:03:06 22 told you that y'all had one of the highest volume oxy stores  
03:03:14 23 in the country?

03:03:14 24 **A** No.

03:03:16 25 **Q** Okay.



**Militello - Cross/Lanier**

03:03:20 1 While we're at the store stop, one last set of  
03:03:23 2 questions.

03:03:24 3 I looked at the layout here. First of all, all  
03:03:28 4 Walgreens are not laid out the same. True?

03:03:29 5 **A** Not exactly, no.

03:03:30 6 **Q** Yeah.

03:03:33 7 So is there a section here where y'all keep the hard  
03:03:36 8 copy scripts?

03:03:39 9 **A** There's a section back behind in a drawer where  
03:03:45 10 current kept. The rest are kept in a locked cage in the  
03:03:47 11 back.

03:03:48 12 **Q** In the back --

03:03:49 13 **A** Of the store, I'm sorry. In the back of the store.

03:03:51 14 **Q** So if you wanted to go check a hard script, you would  
03:03:57 15 have to leave the pharmacy, go to another part of the store,  
03:04:02 16 unlock the cabinet, pull out the hard prescription to look  
03:04:06 17 at it, and then return back to the pharmacy?

03:04:10 18 **A** I would pull it up on Connexus where I would be able  
03:04:13 19 to look at the hard copy of the prescription.

03:04:15 20 **Q** If there is a copy now in Connexus, but you've been  
03:04:19 21 doing this for a long time. They haven't always been on  
03:04:21 22 Connexus, have they?

03:04:22 23 **A** They have not.

03:04:23 24 **Q** And so if we go back 10 years, you've got to go back  
03:04:27 25 there and you've got to go find it; right?

**Militello - Cross/Lanier**

03:04:30 1 **A** If it's a case of needing to see the prescription,  
03:04:33 2 yes, we would have to look at the filed prescription.

03:04:36 3 **Q** Okay.

03:04:38 4 MR. LANIER: Your Honor, that's my stop on  
03:04:40 5 stores. I can go to policies real quick if you want ME to  
03:04:43 6 and then I'll be done.

03:04:44 7 THE COURT: All right. Why don't you wrap up  
03:04:45 8 then. That's fine.

03:04:46 9 MR. LANIER: All right.

03:04:47 10 BY MR. LANIER:

03:04:47 11 **Q** Policies.

03:04:53 12 Ma'am, you were not aware there was even an opioid  
03:04:57 13 epidemic until the last several years. True?

03:05:02 14 **A** I know there's been a problem with people abusing  
03:05:07 15 opioids for several years.

03:05:10 16 **Q** Yeah.

03:05:12 17 But when you were asked in your deposition a few  
03:05:15 18 months back, "When did you first become aware that there was  
03:05:17 19 an opioid prescription problem," you would say -- you  
03:05:20 20 answered, "I would say awareness, probably in the last  
03:05:23 21 several years."

03:05:24 22 Right?

03:05:25 23 MR. MAJORAS: Objection. Consistent.

03:05:26 24 THE COURT: Yeah. Sustained. That's what she  
03:05:28 25 just said.

**Militello - Cross/Lanier**

03:05:29 1 MR. LANIER: Oh, I'm sorry, Judge. I thought  
03:05:31 2 she said there's -- okay. "Been a problem with people  
03:05:34 3 abusing opioids for several years" was your answer.

03:05:39 4 BY MR. LANIER:

03:05:39 5 **Q** So you didn't understand the idea of an opioid  
03:05:42 6 prescription problem until the last several years. Fair?

03:05:46 7 **A** To the extent of abuse, yes. No.

03:05:49 8 **Q** And so if we wanted to go back and look at practices,  
03:05:52 9 say, in 2012, in 2012, things were quite different at  
03:05:57 10 Walmart, weren't they?

03:06:02 11 **A** In what way?

03:06:03 12 **Q** Well, for example, in 2012, y'all had your technicians  
03:06:07 13 filling opioid prescriptions, not just a registered  
03:06:11 14 pharmacist.

03:06:12 15 True?

03:06:12 16 **A** It's always been that way. We've always had  
03:06:16 17 technicians that count our opioid prescriptions.

03:06:20 18 **Q** Well, to actually fill the controlled substance  
03:06:24 19 prescription, that would have been a technician back in  
03:06:26 20 2012, wouldn't it?

03:06:28 21 **A** Yes, and it still is today.

03:06:31 22 **Q** And those technicians don't have the same training  
03:06:35 23 that a registered pharmacist does.

03:06:37 24 Fair?

03:06:38 25 **A** Technicians are not trained as pharmacists, but they

**Militello - Cross/Lanier**

03:06:43 1 are trained to count the prescriptions.

03:06:45 2 **Q** Well, but in 2012, an associate would be the one who's  
03:06:52 3 checking out the opioid purchase.

03:06:55 4 True?

03:06:59 5 **A** I'm sorry. Could you repeat?

03:07:01 6 **Q** Yes, ma'am.

03:07:02 7 In 2012, isn't it true y'all would have an associate  
03:07:06 8 check out the customer for the opioid prescriptions?

03:07:11 9 **A** In 2012 and today, yes.

03:07:13 10 **Q** Okay.

03:07:15 11 And then in 2012, you could pick up an opioid  
03:07:19 12 prescription without an ID, couldn't you?

03:07:22 13 **A** Correct.

03:07:24 14 **Q** And so if we go back to 2012, you've got associates,  
03:07:33 15 pharm techs who are filling the prescriptions, associates,  
03:07:35 16 cashiers, checking them out, and nobody even asking for an  
03:07:39 17 ID. That's the way the world was in Walmart pharmacy in  
03:07:44 18 2012.

03:07:45 19 True?

03:07:52 20 **A** Simplified, yes. That's kind of how the process went.

03:08:03 21 **Q** One last thing that occurred to me as you were giving  
03:08:06 22 your direct examination question. You were asked, "Have you  
03:08:08 23 had tools available to you to help you do that," and it was  
03:08:11 24 in the context of resolving red flags or situations,  
03:08:14 25 whatever you might have called them at the time.

**Militello - Cross/Lanier**

03:08:16 1 Remember that?

03:08:17 2 **A** Yes.

03:08:17 3 **Q** And your answer was, "Especially as things have  
03:08:21 4 evolved, certainly, yes, but we've always used whatever  
03:08:27 5 tools were available to us."

03:08:29 6 True?

03:08:30 7 **A** True.

03:08:31 8 **Q** But a side note. Everything has taken some time at  
03:08:37 9 Walmart to become available as a tool for you to use.

03:08:41 10 Fair?

03:08:43 11 **A** I mean, some things weren't even. . . OARRS was not  
03:08:49 12 around back then. NarxCare was not around back then. So it  
03:08:52 13 wasn't available for us to use.

03:08:55 14 **Q** Well, OARRS is an interesting comment because did you  
03:09:00 15 know that Walmart was four to five years late in allowing  
03:09:04 16 y'all access to OARRS?

03:09:05 17 MR. MAJORAS: Objection. Misstates or  
03:09:08 18 mischaracterizes testimony in evidence.

03:09:09 19 THE COURT: Overruled.

03:09:10 20 THE WITNESS: No, I did not know that.

03:09:11 21 BY MR. LANIER:

03:09:12 22 **Q** In other words, OARRS came about in 2006, but it  
03:09:15 23 wasn't until the -- late 2010, early 2011 range that your  
03:09:20 24 store started being able to use OARRS.

03:09:23 25 Did you remember that?

**Militello - Cross/Lanier**

03:09:23 1 **A** I did not.

03:09:24 2 **Q** All right.

03:09:26 3 If you'd have had that tool available earlier, though,  
03:09:28 4 I assume, like everything else, you would have used it.

03:09:31 5 Fair?

03:09:32 6 **A** Fair.

03:09:33 7 **Q** Okay.

03:09:34 8 MR. LANIER: Your Honor, that's the end of the  
03:09:36 9 road.

03:09:36 10 Thank you for letting me finish.

03:09:39 11 Ma'am, thank you for the work that you do do for the  
03:09:41 12 community, and I wish you the very best.

03:09:43 13 THE COURT: Okay.

03:09:44 14 Ladies and gentlemen, we'll take our mid-afternoon  
03:09:49 15 break, but first, if you'd pass any questions you have for  
03:09:52 16 Ms. Militello to Mr. Pitts, then counsel can review those  
03:09:55 17 during the break. And then we'll pick up in about  
03:09:59 18 15 minutes with the balance of her testimony.

03:10:02 19 (Jury excused from courtroom.)

03:10:04 20 (Recess was taken from 3:10 p.m. till 3:27 p.m.)

03:27:03 21 COURTROOM DEPUTY: All rise.

03:28:55 22 (Jury returned to courtroom.).

03:29:16 23 THE COURT: Okay. Please be seated.

03:29:18 24 And, Ms. Militello, you're still under oath from  
03:29:21 25 before the break.

**Militello - Redirect/Majoras**

03:29:21 1 Mr. Majoras, you may continue, please.

03:29:23 2 MR. MAJORAS: Thank you, Your Honor.

03:29:23 3 REDIRECT EXAMINATION OF LORI MILITELLO

03:29:26 4 BY MR. MAJORAS

03:29:26 5 **Q** Good afternoon, again, Ms. Militello.

03:29:27 6 So at this point in the proceedings, after the lawyers  
03:29:31 7 have had their first chance to talk to you, we get questions  
03:29:33 8 from the jurors that the Judge invites them to submit. They  
03:29:36 9 write them out and we take them.

03:29:37 10 **A** Okay.

03:29:38 11 **Q** I'm going to put them on the screen, and I will read  
03:29:40 12 them so we have them into the record. Answer them best you  
03:29:44 13 can. If you know, great. If you don't, just tell us that.  
03:29:47 14 Okay?

03:29:47 15 **A** Okay.

03:29:48 16 **Q** So, first question, "What happens when a doctor tells  
03:29:53 17 you to fill what is written?"

03:29:58 18 **A** So, in general, any more doctors are very receptive at  
03:30:05 19 kind of discussing the treatment plan for the patient. We  
03:30:09 20 try to just act as a partner with them instead of just  
03:30:13 21 taking an order from them necessarily, although ultimately,  
03:30:17 22 I mean, they are the one evaluating the patient, diagnosing  
03:30:22 23 the patient, writing the prescription for the patient.

03:30:25 24 Most of them are still receptive at giving us  
03:30:28 25 additional information if we ask for it.

**Militello - Redirect/Majoras**

03:30:32 1 **Q** But who gets final say if they're telling you to fill  
03:30:36 2 it and you don't want to fill it?

03:30:37 3 **A** I get the final say on whether I want to or don't want  
03:30:40 4 to, depending on whether I feel it's appropriate.

03:30:43 5 **Q** Next question.

03:30:45 6 "Prior to OARRS, how did you research red flags?"

03:30:51 7 **A** Well, it just depended on what I felt the red flag  
03:30:59 8 was. It could be as simple as talking to the doctor,  
03:31:02 9 calling, discussing -- discussing with the patient what was  
03:31:05 10 going on depending, on the red flag.

03:31:09 11 So there were ways to do it without OARRS. We just  
03:31:16 12 maybe had to use some different -- different ways that we  
03:31:21 13 could ascertain the information that we were trying to find  
03:31:23 14 out.

03:31:30 15 **Q** "Is it true that for years that store has had a big  
03:31:35 16 theft problem? In fact, the Eastlake police had a mini  
03:31:40 17 station there for a while, including the pharma products,  
03:31:45 18 pharmacy products."

03:31:46 19 **A** So I don't -- I don't know necessarily about the --  
03:31:54 20 or, I'm sorry, the police mini station there. The pharmacy  
03:31:58 21 products, if you're speaking back behind the counter,  
03:32:01 22 prescription products, that has never been an issue at our  
03:32:04 23 Eastlake store.

03:32:07 24 I don't know what the level of theft is for sure out  
03:32:11 25 front in the store itself. I couldn't speak to that



**Militello - Redirect/Majoras**

03:32:14 1 necessarily.

03:32:19 2 **Q** "If it's not a red flag for you but it does or is for  
03:32:23 3 another pharmacist at your store, is that wrong?"

03:32:28 4 **A** So every pharmacist is going to look at a prescription  
03:32:31 5 and evaluate it with what they have experienced, what they  
03:32:37 6 know about the patient, about the prescriber, about the  
03:32:40 7 medication.

03:32:43 8 So a red flag for potentially a new graduate out of  
03:32:47 9 pharmacy at our store versus one of us pharmacists that have  
03:32:49 10 been there 20 years is different. So it doesn't necessarily  
03:32:56 11 mean there's anything wrong; it just means that's part of  
03:32:59 12 their process.

03:33:00 13 **Q** This question's actually pretty close but, "Have you  
03:33:04 14 ever had a situation where two pharmacists interpreted a red  
03:33:07 15 flag differently?" And I'll read the whole thing. "Meaning  
03:33:10 16 you and another pharmacist disagreed on an issue, what might  
03:33:14 17 be a problem/concern to one may not -- may not to another?  
03:33:19 18 How is this handled?"

03:33:22 19 **A** If there's two pharmacists at the store and we're both  
03:33:26 20 in the filling process at that point in time, in general,  
03:33:33 21 I -- I can't speak for every pharmacist. I, as a  
03:33:35 22 pharmacist, if there's a concern another pharmacist has, I  
03:33:40 23 want them to be able to feel comfortable with that concern.

03:33:42 24 So if that's going to be the case, then we err on the  
03:33:45 25 side of their caution. And then I just have -- you know,

**Militello - Redirect/Majoras**

03:33:49 1 let them take the wheel on resolving the red flags that they  
03:33:58 2 have.

03:33:58 3 **Q** Now there's some feedback in the mic and to make sure;  
03:34:02 4 it's not my phone, I'm going to put it over my counsel  
03:34:04 5 table.

03:34:04 6 **A** Okay.

03:34:12 7 **Q** I hope that helps us.

03:34:13 8 Next question. "Are dispensed prescriptions for  
03:34:17 9 controlled substances that have not been picked up by the  
03:34:20 10 patient yet stored in the controlled substance safe or in  
03:34:25 11 the bagged prescription location?"

03:34:29 12 **A** So the key word is, is -- they're not necessarily --  
03:34:35 13 they're not dispensed, let's say; they're filled. So if the  
03:34:38 14 prescription is filled, then it is out front but behind the  
03:34:43 15 gate. So it's at a place where the cashier can readily  
03:34:47 16 retrieve it, but it's not. . . it's still under a direct  
03:34:54 17 supervision of the pharmacist because we're right there in  
03:34:57 18 the pharmacy. So although it is not in the safe, it's still  
03:35:02 19 under direct supervision of the pharmacy -- pharmacist.

03:35:05 20 **Q** I think we -- the next one is a similar question.  
03:35:10 21 C-II safe.

03:35:11 22 "Are controlled substance prescription kept in the  
03:35:15 23 C-II safe while they're waiting to be picked up or are they  
03:35:19 24 on the shelf with the bagged prescriptions?"

03:35:21 25 **A** They are hanging out front with bag prescriptions.

**Militello - Redirect/Majoras**

03:35:33 1 **Q** A little small.

03:35:34 2 "You stated that in order for you to review a hard  
03:35:37 3 copy of the prescription, you needed to go outside the  
03:35:41 4 pharmacy in a locked cabinet. Would that mean that you  
03:35:44 5 would need to make everyone leave the pharmacy and lock it  
03:35:48 6 up? Why would these not be locked up in the pharmacy?"

03:35:52 7 **A** For controlled substances, we -- we are generally able  
03:35:56 8 to keep quite a large number back in the pharmacy area, but  
03:36:02 9 due to space inhibitions, we are to store the majority of  
03:36:07 10 old files -- sorry -- old files in the back of the store in  
03:36:11 11 a locked cage.

03:36:13 12 **Q** How often do you find yourself having to go back to  
03:36:15 13 that area of the store? That's my question.

03:36:18 14 **A** I -- I've -- I very rarely -- I, myself, have never  
03:36:24 15 had to go back there.

03:36:29 16 **Q** Now, here's a couple of questions. I'll try do them  
03:36:32 17 one at a time.

03:36:37 18 "Do technicians have to abide by the CSA? Are they  
03:36:42 19 bound to adhere to corresponding responsibility?"

03:36:48 20 **A** It's the pharmacist's responsibility to make sure  
03:36:52 21 everyone in the pharmacy is abiding by the CSA. So they are  
03:37:00 22 part of our process of corresponding responsibility, but  
03:37:03 23 they themselves are not responsible.

03:37:08 24 **Q** "Would a hormone doctor write for C-IIIs?"

03:37:15 25 **A** Yeah. He was treating him for a condition that -- he

**Militello - Redirect/Majoras**

03:37:23 1 was also rehab. The patient that he was treating had severe  
03:37:28 2 debilitating pain issues, and so that was part of his  
03:37:32 3 treatment.

03:37:32 4 **Q** How were -- this is my question. How were you aware  
03:37:35 5 of that?

03:37:35 6 **A** Speaking to the patient, and the doctor, but -- both  
03:37:40 7 of them.

03:37:40 8 **Q** And what was the information you had after those  
03:37:43 9 conversations?

03:37:44 10 **A** Well, with the patient, I mean, he would -- he would  
03:37:48 11 always look physically in pain in the line to pick up  
03:37:53 12 prescription, he would generally be squatting on the floor  
03:37:55 13 because he couldn't bear to stand and wait in line.

03:37:59 14 When I talked to the doctor about his condition, I was  
03:38:02 15 told he's in such debilitating pain, that if his pain's not  
03:38:07 16 treated properly, he's going to end up with such a quality  
03:38:10 17 of life that either he's going to be, you know, living in  
03:38:13 18 his basement for the rest of his life or potentially  
03:38:17 19 committing suicide because he just can't -- he can't  
03:38:20 20 physically handle it.

03:38:21 21 **Q** We'll get back to some additional questions about  
03:38:24 22 that, but let's go -- let's go through the juror questions.

03:38:26 23 So this one says, "Prior to dispensing, do pharmacists  
03:38:32 24 check the medical doctor's specialty?"

03:38:38 25 **A** Yeah.

**Militello - Redirect/Majoras**

03:38:39 1 So we check -- we kind of do an overall check of the  
03:38:44 2 prescription, and if we have additional questions as to what  
03:38:47 3 the specialty might be, then certainly we look into that.

03:38:50 4 **Q** And I think the next one relates to the information  
03:38:55 5 you had seen in cross-examination about the dispensing.

03:38:59 6 It says -- I think this means, "January 8th equals  
03:39:02 7 diazepam of 60 tablets. January 16th equals" -- I don't  
03:39:09 8 know if you could help me with the pronunciation, please?

03:39:11 9 **A** Carisoprodol.

03:39:12 10 **Q** "Carisoprodol of 90 tablets, and on January 22nd  
03:39:15 11 equals OxyContin of 30 tablets. 180 pills in 15 days. How  
03:39:22 12 isn't this a red flag for a hormone M.D.?"

03:39:27 13 **A** So the -- I mean, it's 180 tablets, but they're not  
03:39:31 14 180 of the same type of tablet. They are three medications  
03:39:39 15 that are in a trinity treatment, I understand that. But in  
03:39:43 16 conversation with the doctor, in conversation with the  
03:39:45 17 patient, the doctor expressed that he's trying to get this  
03:39:51 18 patient's pain under control so that he can have some  
03:39:54 19 quality of life.

03:39:55 20 So we look at each individual medication and how  
03:39:59 21 that's being dispensed and time between dispensings, and  
03:40:05 22 also take into account what changes the doctor was trying  
03:40:09 23 make.

03:40:09 24 **Q** So in looking -- and this, again, my question. So in  
03:40:12 25 looking at the prescriptions that you saw that Mr. Lanier

**Militello - Redirect/Majoras**

03:40:16 1 showed you for this patient, was that a red flag?

03:40:20 2 **A** I mean, it was something that I wanted to confer with  
03:40:25 3 the doctor about. Certainly I wouldn't have filled that  
03:40:28 4 without talking to the doctor or talking to the patient,  
03:40:33 5 doing checks on OARRS, that kind of thing first.

03:40:36 6 **Q** And I'm sorry if I asked this, but do you recall how  
03:40:39 7 many conversations you had with the doctor about that  
03:40:41 8 particular patient?

03:40:42 9 **A** I don't recall the number of conversations.

03:40:45 10 **Q** Was there more than one?

03:40:46 11 **A** Yes.

03:40:57 12 **Q** This also relates to the OARRS report for Dr. Levin's  
03:41:01 13 Patient Number 9653. It says, "The patient was written a  
03:41:05 14 prescription for" -- that drug I can't pronounce --  
03:41:08 15 "carisoprodol, on October 24, 2016, and waited to fill the  
03:41:15 16 prescription until January 16, 2017. Do you consider that a  
03:41:21 17 red flag?"

03:41:22 18 And if you need to look at the form, I can show that  
03:41:24 19 to you.

03:41:25 20 **A** I think I still maybe have it.

03:41:28 21 **Q** This is Plaintiffs' Exhibit 21391, and I think the  
03:41:35 22 OARRS report starts on Page 0003.

03:41:48 23 **A** Yeah.

03:41:49 24 In certain situations, I mean, certainly it would be a  
03:41:52 25 red flag for a patient to have a prescription and then fill

**Militello - Redirect/Majoras**

03:41:54 1 it at a later time period, but because his OARRS report was  
03:41:58 2 showing that he was not filling that medication anywhere  
03:42:01 3 else but with us or in a timely manner, that didn't  
03:42:08 4 necessarily cause a red flag to prohibit filling.

03:42:19 5 **Q** Two more. Two in the first one.

03:42:22 6 "Are you aware of any corporate blocks that Walmart  
03:42:24 7 has in place for prescribers in Lake County? How far back  
03:42:28 8 in time do these blocks go? What's the earliest block you  
03:42:33 9 are aware of?"

03:42:35 10 **A** So, yes, I am aware of corporate blocks for  
03:42:39 11 prescribers in Lake County. They've kind of progressed over  
03:42:44 12 the years.

03:42:46 13 Earliest block that I'm aware of, corporate block,  
03:42:53 14 probably four to five years ago, maybe.

03:43:00 15 **Q** When are consultations with a pharmacist required?

03:43:12 16 **A** So we request that any new prescription be given a  
03:43:15 17 consultation. So when a cashier checks that patient out,  
03:43:18 18 that person out, the cashier will put the prescription bag  
03:43:21 19 at our counsel window behind the counter and the pharmacist  
03:43:26 20 will come over and discuss the medication with the patient.

03:43:28 21 **Q** So those are the juror questions. I want a few  
03:43:34 22 follow-up of my own, particularly on what you just said.

03:43:38 23 When you say consultations for new prescription, is  
03:43:41 24 that any type of medication?

03:43:41 25 **A** Yes.

**Militello - Redirect/Majoras**

03:43:41 1 **Q** So when you're dispensing a Schedule II controlled  
03:43:46 2 substance, are there refills available for Schedule II  
03:43:49 3 controlled substances?

03:43:50 4 **A** There are not, no.

03:43:51 5 **Q** So whenever a new one comes in, even if it's for the  
03:43:54 6 same patient, how do you interpret that from your  
03:43:57 7 consultation duties?

03:43:59 8 **A** So we request that the patient be counseled on any  
03:44:02 9 prescription that comes to us from the doctor. So in that  
03:44:06 10 case, we would ask that they be at the consultation window.

03:44:10 11 **Q** Okay.

03:44:13 12 I want to go back to some questions you had about  
03:44:16 13 technicians filling or pharmacists filling.

03:44:19 14 Do you recall those?

03:44:19 15 **A** Yes.

03:44:20 16 **Q** Okay.

03:44:20 17 First -- first question. From -- in Walmart  
03:44:24 18 terminology, when we saw -- maybe we can call one up. If  
03:44:28 19 you go to Tab 1 of your binder, and this is Walmart  
03:44:43 20 MDL-013430501. Let's get that up on the screen.

03:44:49 21 MR. LANIER: Can we have a copy?

03:44:50 22 MS. FUMERTON: We gave that to you already,  
03:44:53 23 Mark.

03:44:54 24 MR. MAJORAS: It's the same one I used earlier  
03:44:56 25 in the exam. And in particular if we could blow up the



**Militello - Redirect/Majoras**

03:45:00 1 bottom part, the end-of-day label.

03:45:09 2 BY MR. MAJORAS:

03:45:10 3 **Q** Okay. So if we look at the bold lettering in sort of  
03:45:14 4 the top right where it says 4PT, that's the four point you  
03:45:18 5 talked about earlier?

03:45:19 6 **A** Right.

03:45:19 7 **Q** Okay. At the end of that is FIL, F-I-L.

03:45:22 8 Do you see that?

03:45:23 9 **A** Yes.

03:45:23 10 **Q** Okay.

03:45:23 11 What does it mean when it says FIL here? What are --  
03:45:27 12 what is that indicating?

03:45:28 13 **A** It's the process where our technicians carry around a  
03:45:37 14 handheld device where sequentially fills prioritized,  
03:45:43 15 depending on time, will come up to their handheld machine.  
03:45:48 16 So when it comes up, they will enter on the first drug,  
03:45:50 17 which comes up on their screen.

03:45:52 18 They go take that drug off of the shelf. They scan  
03:45:55 19 the NDC or the UPC, the bar code on that bottle, which tells  
03:46:00 20 them whether they have the right or wrong bottle of  
03:46:03 21 medication.

03:46:04 22 Once it scans in, they take it to what we call the  
03:46:08 23 filling pod, which in our pharmacy, there are three of those  
03:46:12 24 across the prescription bottle bays.

03:46:16 25 And so they count the medication out there where a

**Militello - Redirect/Majoras**

03:46:19 1 label printer is on every pod. The label prints out of that  
03:46:24 2 printer. And then they apply it to that bottle, put it in  
03:46:28 3 the plastic bag they're working out of, and they move to the  
03:46:31 4 next drug, if there is one in that order.

03:46:33 5 So once they've filled all the drugs or medications  
03:46:37 6 for a patient in an order, that bag gets put to a rack for  
03:46:43 7 the pharmacist to visually verify those medications.

03:46:46 8 **Q** So in terms of what a technician might do in what your  
03:46:51 9 terminology is the fill process, who is the person who  
03:46:56 10 exercises corresponding responsibility over that particular  
03:46:58 11 prescription?

03:46:58 12 **A** The pharmacist.

03:46:58 13 **Q** In what way? How do we know that from what we look at  
03:47:02 14 here?

03:47:03 15 **A** The visual verify indicates the pharmacist has taken a  
03:47:07 16 final look at the medication and in a Controlled II  
03:47:14 17 substance like this, we've then triple counted that  
03:47:17 18 substance and then we also back count the stock bottle of  
03:47:23 19 that medication, and we inventory that directly into the  
03:47:26 20 computer to make sure the counts are on.

03:47:30 21 And so we've also four-pointed that prescription,  
03:47:32 22 which is comparing the data from the prescription to the  
03:47:36 23 system entry.

03:47:39 24 So our responsibility lies in making sure that is  
03:47:41 25 correct the whole way through.

**Militello - Redirect/Majoras**

03:47:42 1 **Q** So going -- Mr. Lanier asked you some questions back  
03:47:45 2 in 2012 about filling. Were technicians filling  
03:47:49 3 prescriptions in terms of doing the count and putting in the  
03:47:51 4 bags the way you just described back then?

03:47:54 5 **A** It was -- yeah. They were doing the counts. Back  
03:47:58 6 then, we used backseats instead of bags, but yes, they would  
03:48:02 7 still count the prescription. The prescription would then  
03:48:04 8 go into a basket, which would be put on a rack for the  
03:48:07 9 pharmacist to then visually verify that medication.

03:48:09 10 **Q** So even back in 2012, would a controlled substance be  
03:48:15 11 dispensed at Walmart without a pharmacist looking at it?

03:48:19 12 **A** No.

03:48:19 13 **Q** And exercising his or her judgment?

03:48:21 14 **A** No.

03:48:21 15 **Q** Well, how did you do that back then that may or may  
03:48:24 16 not be different from today?

03:48:26 17 **A** I mean, the process is slightly different in how it  
03:48:31 18 gets from Point A to Point B, but it still is the process of  
03:48:37 19 us verifying prescription medication to label to  
03:48:42 20 prescription, all of that has always been the same.

03:48:58 21 MR. MAJORAS: Thank you, Ms. Militello. I  
03:49:00 22 appreciate your time this afternoon.

03:49:01 23 No further questions, Your Honor.

03:49:03 24 THE COURT: Thank you, Mr. Majoras.

**Militello - Recross/Lanier**

03:49:03 1 RECCROSS-EXAMINATION OF LORI MILITELLO

03:49:27 2 BY MR. LANIER

03:49:27 3 **Q** Okay. Just the last couple of things and you can head  
03:49:37 4 home.

03:49:41 5 We talked about this person who was visiting the  
03:49:44 6 hormone doctor, and you described him in Mr. Majoras's  
03:49:51 7 questions to you as someone who came in and seemed to be in  
03:49:55 8 severe pain?

03:49:56 9 **A** Yes.

03:49:59 10 **Q** Are you familiar at all with the symptoms of  
03:50:02 11 withdrawal from opioid addiction?

03:50:05 12 **A** Yes.

03:50:07 13 **Q** Because the way you described him was a lot like  
03:50:12 14 Dr. Lembke described withdrawal for --

03:50:16 15 MR. MAJORAS: Objection.

03:50:17 16 MR. LANIER: I haven't finished asking.

03:50:19 17 THE COURT: Overruled.

03:50:20 18 BY MR. LANIER:

03:50:20 19 **Q** For opiate addiction.

03:50:22 20 Would you agree with such an assessment from a  
03:50:24 21 perspective of a pharmacist?

03:50:26 22 **A** I don't -- I don't agree with that, no.

03:50:30 23 **Q** And I do know at least one time when he was there, you  
03:50:32 24 also smelled alcohol on his breath?

03:50:34 25 **A** I did not personally, no.

**Militello - Recross/Lanier**

03:50:37 1 Q Okay.

03:50:38 2 So, but you've seen that entry in the prescription  
03:50:40 3 records as well; right?

03:50:43 4 A Um. . . was that on something you just showed today?

03:50:47 5 Q Yeah. It was in the 21391, the refusal to fill.

03:50:53 6 Said, "The patient wouldn't wait for me to verify proper  
03:50:55 7 relationship with the doctor for oxy 30-milligram  
03:50:59 8 prescriptions per policy and smelled of alcohol."

03:51:03 9 A Okay. I see that that is written on there, yes.

03:51:06 10 Q Yeah. I'm just saying, at some point, did it trigger  
03:51:12 11 in your brain this doesn't sound like a hormone therapy  
03:51:15 12 problem?

03:51:19 13 A The doctor's title of hormone, I mean, that's part of  
03:51:23 14 his treatment scope, so there's more to it than just that.  
03:51:32 15 But, yeah, I see what -- I see what the pharmacist here had  
03:51:35 16 written.

03:51:37 17 Q This is not the first time you'd had trouble with this  
03:51:41 18 doctor and what he was doing. True?

03:51:48 19 I'm handing you Plaintiff's 26767, and this is one  
03:51:53 20 where you refused to fill several years earlier, and your  
03:52:00 21 reason was that the morphine equivalent was 350 and the  
03:52:04 22 doctor refused to deal with the pharmacy on the issue.

03:52:08 23 Do you see that?

03:52:09 24 A I do see that.

03:52:11 25 Q Down at the bottom, you said the patient has had

**Militello - Recross/Lanier**

03:52:16 1 questionable tendencies in the past. The morphine  
03:52:20 2 equivalent for the patient is 350.

03:52:23 3 What is the morphine equivalent on the fellow that we  
03:52:26 4 were talking about before that you said was in such agony?

03:52:32 5 Do you recall?

03:52:37 6 **A** On this OARRS report, it reads 465.

03:52:40 7 **Q** That's a lot more than the 350 that caused you not to  
03:52:44 8 write for this fellow; right? Fill for this fellow, excuse  
03:52:48 9 me.

03:52:50 10 Right?

03:52:51 11 **A** That's correct, yeah.

03:52:52 12 **Q** And then the same doctor has no interest in dealing  
03:52:57 13 with the pharmacy professionally. Patient had prescription  
03:53:02 14 for hydromorphone and filled a prescription for oxycodone.  
03:53:06 15 I felt uncomfortable with the prospect of filling this  
03:53:09 16 prescription. In my professional judgment, denied filling.

03:53:13 17 Kudos to you for doing that, but, ma'am, this doesn't  
03:53:17 18 hold a candle to this other fellow that years later you all  
03:53:21 19 are filling for, does it?

03:53:23 20 MR. MAJORAS: Objection. Form.

03:53:24 21 THE COURT: Overruled.

03:53:26 22 THE WITNESS: It's a different patient, a  
03:53:28 23 different situation, so every situation is unique.

03:53:32 24 BY MR. LANIER:

03:53:32 25 **Q** Okay.

03:53:34 1 By the same token, if we're looking at your  
03:53:36 2 situations, I tried to add up how many prescriptions over a  
03:53:41 3 six-year period, from 2013 to 2018, that you personally  
03:53:46 4 filled for the trinity.

03:53:48 5 **A** Um-hmm.

03:53:49 6 **Q** Would you be shocked to know that over 900 times, you  
03:53:55 7 did so?

03:53:55 8 MR. MAJORAS: Objection.

03:53:56 9 THE COURT: Overruled.

03:53:57 10 THE WITNESS: I did not know the number of how  
03:53:59 11 many times.

03:54:01 12 MR. LANIER: Okay. That's all I've got,  
03:54:03 13 Judge. Thank you.

03:54:03 14 Thank you, ma'am.

03:54:05 15 THE COURT: Okay. Thank you very much, ma'am.  
03:54:07 16 You may be excused.

03:54:08 17 THE WITNESS: Thank you.

03:54:09 18 (Witness excused.)

03:54:32 19 THE COURT: The defendants may call their next  
03:54:34 20 witness, please.

03:54:57 21 MS. FUMERTON: Your Honor, may I proceed?

03:54:58 22 THE COURT: Yes. Yes. You may call your next  
03:55:00 23 witness.

03:55:00 24 MS. FUMERTON: Thank you, Your Honor.

03:55:02 25 Walmart calls as its next witness, Debbie Mack by

03:55:08 1 video deposition designation.

03:55:11 2 Ms. Mack is a former Walmart employee of 31 years, who  
03:55:14 3 joined Walmart as a pharmacist and worked her way up to  
03:55:16 4 become a senior director in Walmart's Health and Wellness  
03:55:20 5 Practice Compliance at Walmart's home office.

03:55:23 6 What will, be played for you is about 22 minutes of  
03:55:27 7 Ms. Mack responding to questions from one of plaintiffs'  
03:55:30 8 attorneys, Allison Gaffney.

03:55:34 9 MR. WEINBERGER: Your Honor --

03:55:36 10 THE COURT: Well, hold on. Let's go on the  
03:55:39 11 headset.

03:55:40 12 MR. WEINBERGER: Can we go on the. . .

03:55:43 13 THE COURT: Yeah.

03:55:54 14 (Proceedings at sidebar:)

03:55:54 15 MR. WEINBERGER: Your Honor, this is a  
03:55:57 16 deposition that we, as you know, has been at issue that  
03:56:01 17 we've objected to. For -- and that they've done the  
03:56:04 18 designations on.

03:56:05 19 For Ms. Fumerton to introduce this witness as the fact  
03:56:11 20 that the plaintiffs' lawyer asked these questions is highly  
03:56:16 21 inappropriate.

03:56:16 22 THE COURT: Well, Mr. Weinberger, I think they  
03:56:19 23 recognize --

03:56:20 24 MR. WEINBERGER: It's not my voice.

03:56:21 25 THE COURT: Well --



03:56:22 1 MR. WEINBERGER: It's a woman's voice. It's  
03:56:23 2 not my voice. This woman has never -- her voice has not  
03:56:28 3 been on any videos, and --

03:56:30 4 THE COURT: Well, candidly, it doesn't matter  
03:56:32 5 who's asking the questions.

03:56:34 6 MR. WEINBERGER: Well, the implication --  
03:56:35 7 well, maybe that's what we need to say.

03:56:38 8 THE COURT: It's a Walmart employee so it  
03:56:39 9 doesn't matter.

03:56:40 10 MR. WEINBERGER: Right, it's a Walmart  
03:56:41 11 employee who we objected, whose deposition -- they should  
03:56:43 12 have brought her in live.

03:56:44 13 THE COURT: Well, look. It doesn't matter  
03:56:46 14 who's asking the question. The witness is presumably  
03:56:50 15 telling the truth. Okay? So -- so the time's being charged  
03:56:56 16 to Walmart. They're calling her. It doesn't matter who  
03:56:59 17 asked the questions. Walmart's designated this deposition.

03:57:01 18 MR. WEINBERGER: Well, then let's add to the  
03:57:03 19 fact that this deposition was allowed because of a sanctions  
03:57:07 20 motion.

03:57:07 21 THE COURT: I'm not going into any of that.  
03:57:09 22 Walmart's calling Ms. Mack, a former employee, by video,  
03:57:13 23 which they're allowed to do. It doesn't matter who asked  
03:57:15 24 the questions.

03:57:16 25 Okay. Let's proceed.

**Deposition Testimony of Deborah Mack**

03:57:17 1 MR. WEINBERGER: Okay.

03:57:26 2 (Proceedings resumed in open court.)

03:57:26 3 DEPOSITION TESTIMONY OF DEBORAH MACK

03:57:26 4 BY MS. GAFFNEY:

03:57:40 5 **Q** Ms. Mack, you worked for Walmart for 31 years; is that  
03:57:44 6 correct?

03:57:44 7 **A** That's correct.

03:57:48 8 **Q** And you began working in Walmart Practice Compliance  
03:57:55 9 Department in 2006; is that correct?

03:57:56 10 **A** Yes.

03:57:58 11 **Q** And in 2012, you became a Senior Director in the  
03:58:03 12 Practice Compliance Department in Health and Wellness; is  
03:58:08 13 that right?

03:58:08 14 **A** Yes.

03:58:09 15 **Q** How would you describe your responsibilities as the  
03:58:12 16 Senior Director of Practice Compliance?

03:58:15 17 **A** So I had 17 states that I was responsible for the  
03:58:19 18 compliance requirement, and my main thing I had to do was  
03:58:26 19 have a relationship with all the Boards of Pharmacy and so  
03:58:29 20 the 17 different states. And so Board of Pharmacy rules,  
03:58:35 21 legislation, all that gets passed in each of those states  
03:58:39 22 each year, being over an individual that was over controlled  
03:58:48 23 substances and then also immunizations, vaccines, point of  
03:58:53 24 care testing for -- that was for the whole company but all  
03:58:56 25 the first roles was for 17 states.

**Deposition Testimony of Deborah Mack**

03:58:58 1 **Q** Okay. Thank you.

03:58:59 2 When you said being over an individual that was over  
03:59:03 3 controlled substances, can you explain what that means?

03:59:07 4 **A** The individual did the day-to-day working with asset  
03:59:13 5 protection, anything that's happening in stores and  
03:59:16 6 notifying the DEA and the states' controlled substance  
03:59:24 7 agencies.

03:59:24 8 **Q** Okay. And who was that individual or individuals?

03:59:28 9 **A** Shelley Tustison Nelson.

03:59:28 10 **Q** And in your position, you were -- as a Senior  
03:59:32 11 Director, you were in a higher management position than  
03:59:38 12 Mr. Nelson; is that correct?

03:59:38 13 **A** Yes.

03:59:39 14 **Q** It reads, "Since 2015, pharmacists have been able to  
03:59:43 15 search RTS across the company."

03:59:44 16 To your knowledge, is that an accurate statement?

03:59:58 17 **A** To my knowledge, pharmacists could search it. I don't  
04:00:01 18 know exactly which year they began searching.

04:00:06 19 **Q** Okay.

04:00:07 20 And do you know what programs pharmacists could use to  
04:00:12 21 search RTF? Was it Archer?

04:00:14 22 **A** Yes.

04:00:15 23 **Q** And how would you describe, in your own words, the  
04:00:17 24 difference between a blanket refusal to fill and a corporate  
04:00:20 25 block?

**Deposition Testimony of Deborah Mack**

04:00:23 1 **A** A blanket refusal to fill is when a pharmacist decides  
04:00:28 2 I can't fill -- I will not fill prescriptions for X doctor,  
04:00:33 3 and a corporate block is when the company sends something  
04:00:38 4 down and blocks a particular doctor and nobody could fill  
04:00:40 5 it.

04:00:41 6 **Q** When you began your role as the Senior Director of  
04:00:44 7 Practice Compliance in 2012, did Walmart permit its  
04:00:48 8 pharmacists to impose blanket refusals to fill?

04:00:58 9 **A** Walmart had stated that they wanted pharmacists to  
04:01:00 10 look at every prescription before determining whether they  
04:01:02 11 felt comfortable filling or not, but it was up to the  
04:01:05 12 pharmacist if they filled a prescription.

04:01:08 13 **Q** And were pharmacists in -- Walmart pharmacists in 2012  
04:01:13 14 allowed to impose blanket refusal to fills on any and all  
04:01:18 15 prescriptions coming from a particular prescriber?

04:01:24 16 **A** They needed to look at each prescription first. So  
04:01:27 17 they -- they were supposed to look at each prescription  
04:01:31 18 before making that determination. I mean, that was true  
04:01:35 19 when I came to Walmart 31 years ago. The pharmacists always  
04:01:40 20 had the say whether to fill a prescription or not.

04:01:43 21 **Q** But they did not have the choice to impose a blanket  
04:01:46 22 refusal to fill on a prescriber in 2012; is that correct?

04:01:50 23 **A** It was always up to the pharmacist whether they filled  
04:01:52 24 a prescription.

04:02:01 25 **Q** Ms. Mack, I'm just asking whether pharmacists at

**Deposition Testimony of Deborah Mack**

04:02:04 1 Walmart, in 2012, were permitted to impose a blanket refusal  
04:02:07 2 to fill on a prescriber without looking at each prescription  
04:02:11 3 individually.

04:02:13 4 **A** At that time, I would say no, they needed to look at  
04:02:15 5 every prescription.

04:02:17 6 **Q** Ms. Mack, before the short break, we were discussing  
04:02:20 7 the rationale for Walmart's prohibition on blanket refusals  
04:02:24 8 to fill.

04:02:24 9 And without asking about the specifics of any  
04:02:27 10 communication from counsel, I just want to clarify your  
04:02:29 11 testimony for the record.

04:02:31 12 It's your testimony that the basis for the prohibition  
04:02:34 13 on blanket refusals to fill was the advice of counsel?

04:02:37 14 **A** I would say it was many things involved in that  
04:02:43 15 early-on decision. I personally had spoken to Board of  
04:02:47 16 Pharmacy. I know Susanne Hiland spoke to Boards of  
04:02:51 17 Pharmacy. We understood the corresponding responsibility of  
04:02:54 18 pharmacists, and this guidance was out there for sure, too.

04:03:03 19 And, yes, I would say taken all that together, it made  
04:03:08 20 up the discussion between attorneys and our team on blanket  
04:03:12 21 refusals.

04:03:15 22 **Q** When you say you personally had spoken to Boards of  
04:03:19 23 Pharmacy, which Boards?

04:03:22 24 **A** Texas Board of Pharmacy was the first one and the --  
04:03:27 25 probably the main one. And their opinion softened over

**Deposition Testimony of Deborah Mack**

04:03:32 1 time. But back then, the early 2000s, it was very much that  
04:03:36 2 a pharmacist must look at every prescription before filling.  
04:03:39 3 They could ultimately decide not to fill everything for  
04:03:44 4 Dr. X, but they had to look at every prescription first.

04:03:48 5 **Q** And were -- those conversations with the Texas Board  
04:03:53 6 of Pharmacy, when did those take place?

04:03:59 7 **A** I would say the first one for me was around 2007 or  
04:04:04 8 2008. I had multiple ones with the executive director at  
04:04:11 9 that time, Gay Dodson.

04:04:13 10 And then years later, as their opinion started to  
04:04:18 11 soften somewhat, I had additional conversation with the  
04:04:25 12 chief attorney, Kerstin Arnold.

04:04:33 13 **Q** When you say the chief attorney, was that at the Board  
04:04:40 14 of Pharmacy?

04:04:40 15 **A** Yes.

04:04:41 16 **Q** And these discussions that you had over the years with  
04:04:46 17 the Texas Board of Pharmacy, are they memorialized anywhere?

04:04:49 18 **A** No, not -- I don't think they're memorialized anywhere  
04:04:56 19 that's available or -- they're just -- they were verbal  
04:05:00 20 conversations every time.

04:05:01 21 **Q** And then after those verbal conversations, did you  
04:05:05 22 ever communicate the content of that conversation in writing  
04:05:08 23 to anyone at Walmart?

04:05:12 24 **A** Not in writing, but I did communicate it.

04:05:16 25 **Q** And how did you communicate it?

**Deposition Testimony of Deborah Mack**

04:05:22 1 **A** In meetings as we were discussing this type of  
04:05:27 2 information, I would communicate what I had learned from the  
04:05:31 3 Board of Pharmacy.

04:05:32 4 There were other boards later on as well, but Texas  
04:05:35 5 was the very first one.

04:05:36 6 **Q** Other than the Texas Board of Pharmacy, did you have  
04:05:42 7 communications with any other Boards of Pharmacy in which  
04:05:46 8 they discussed the evidence on blanket refusal to fill?

04:05:54 9 **A** The Oregon Board of Pharmacy, I spoke to them about  
04:05:58 10 it. California Board of Pharmacy, I spoke to them. Idaho,  
04:06:14 11 I spoke to them on several different issues. But for sure  
04:06:16 12 Oregon and California.

04:06:21 13 **Q** And when did the conversation with the Oregon Board of  
04:06:24 14 Pharmacy take place?

04:06:29 15 **A** I could not possibly pinpoint the year for you.

04:06:35 16 **Q** Could you --

04:06:36 17 **A** Like I said, it was later than Texas, but I don't know  
04:06:38 18 exactly when that occurred.

04:06:48 19 **Q** And how about the conversations you referenced with  
04:06:51 20 the California Board of Pharmacy; when did those take place?

04:06:56 21 **A** Again, I don't know the date, but it was around the  
04:07:01 22 time that California was. It was later than Texas. Texas  
04:07:05 23 was the very first one. I remember it extremely well.

04:07:09 24 **Q** Okay.

04:07:11 25 Just to clarify for the record, you said it was around

**Deposition Testimony of Deborah Mack**

04:07:13 1 the time that California was. Did you mean Oregon?

04:07:19 2 **A** Oh, you're asking me about California. So around the  
04:07:23 3 time, Oregon, yes.

04:07:24 4 **Q** Okay.

04:07:35 5 At what point did Walmart begin permitting its  
04:07:39 6 pharmacists to impose blanket refusals to fill?

04:07:42 7 **A** Well, they -- they could always refuse if they looked  
04:07:48 8 at the prescription first. So even blanket refusal to say  
04:07:55 9 everything for Dr. X or Dr. Smith, if they looked at every  
04:07:58 10 one of these prescriptions as they came in, they could  
04:08:01 11 always decide not to fill. I mean, the opportunity was  
04:08:07 12 there, they just had to look at the prescription.

04:08:17 13 **Q** At what point did Walmart permit its pharmacists to  
04:08:20 14 refuse to fill all prescriptions from a prescriber without  
04:08:23 15 looking at each prescription individually?

04:08:25 16 **A** I would say the first time that the policy changed  
04:08:29 17 somewhat to take out the blanket refusal. I think that  
04:08:36 18 might have been somewhere around 2015.

04:08:40 19 **Q** And what was the basis for that change in 2015?

04:08:43 20 **A** As I continued talking to Texas, they started  
04:08:50 21 softening on their approach. At first, their approach was a  
04:08:53 22 pharmacist should look at every prescription before they  
04:08:55 23 make a decision. And then the -- well, I was at a Texas  
04:09:01 24 Board meeting and I heard Kerstin Arnold, the attorney,  
04:09:06 25 soften so much in that -- so much, you know, for that



**Deposition Testimony of Deborah Mack**

04:09:09 1 particular statement.

04:09:11 2           So I went up and talked to her afterwards and she  
04:09:15 3 said, yes, if a pharmacist has already decided they can't  
04:09:19 4 fill for Dr. Smith, they could blanket refuse that. And  
04:09:24 5 that was the first time I had ever heard a Board that  
04:09:26 6 actually said do this without looking at every prescription.  
04:09:29 7 So it was pretty monumental to me that I remember that.

04:09:34 8           And those are the types of things, you know, our team  
04:09:37 9 would bring back and we would talk in these meetings with  
04:09:40 10 the attorneys and things were evolving and things were  
04:09:47 11 changing and we were updating policies and changing policies  
04:09:51 12 and it wasn't flipping a light switch that all of a sudden,  
04:09:55 13 you need to change it, but it was evolving over time.

04:09:58 14 **Q**       And when did that particular Texas Board meeting that  
04:10:02 15 you've just described occur?

04:10:09 16 **A**       I don't know the actual date, but it was years after  
04:10:13 17 2007. 2007 was the first time and then years later. So I'm  
04:10:21 18 going to say five or six, seven years later, this occurred.  
04:10:25 19 And it had always -- I had always heard Texas say, look at  
04:10:30 20 every prescription and then this was just very different  
04:10:32 21 that day. So I think their -- their opinion evolved over  
04:10:36 22 time as well.

04:10:37 23 **Q**       Okay. Ms. Mack, you mentioned communications with the  
04:10:42 24 Texas, Oregon, California, and Idaho Boards of Pharmacy.  
04:10:49 25 Were there any others that you communicated with regarding

**Deposition Testimony of Deborah Mack**

04:10:52 1 blanket refusals to fill?

04:10:55 2 **A** Nevada. Could have very possibly talked to Oklahoma,  
04:11:11 3 Kansas, Oregon, Mexico about that because that was -- as  
04:11:16 4 time was evolving, that was becoming a bigger topic of  
04:11:22 5 conversation as I talked to different directors.

04:11:25 6 **Q** And did you ever have any conversations with the Ohio  
04:11:29 7 Board of Pharmacy regarding blanket refusals to fill?

04:11:33 8 **A** I don't think so. I mean, I did have Ohio for a very,  
04:11:38 9 very short time, but I don't remember that ever being a  
04:11:41 10 topic of conversation.

04:11:42 11 **Q** And when you would have calls with representatives  
04:11:44 12 from Boards of Pharmacy, what would be -- what would prompt  
04:11:48 13 those calls?

04:11:49 14 **A** Well, that was the major part of my job was working  
04:11:54 15 with the executive directors and the Boards of Pharmacy. So  
04:11:57 16 whether it be to touch base and see what's going on in their  
04:11:59 17 state or to ask questions, you know, what they tell their  
04:12:06 18 pharmacists about this or that, it was just that was the  
04:12:12 19 major communication tool. We didn't -- I couldn't travel to  
04:12:15 20 17 states and be at every Board of Pharmacy meeting. So I  
04:12:19 21 typically called them and talked to them about various  
04:12:23 22 things.

04:12:23 23 **Q** Okay.

04:12:24 24 So typically, you would initiate those calls to the  
04:12:27 25 Board representatives?

**Deposition Testimony of Deborah Mack**

04:12:28 1 **A** I would say typically I called them, but they  
04:12:30 2 definitely called me as well.

04:12:31 3 **Q** Besides this -- the Texas Board meeting that you  
04:12:35 4 described that indicated a possible change in position for  
04:12:38 5 the Texas Board, did any other board of -- did any Boards of  
04:12:44 6 Pharmacy communicate to you that it was okay to permit  
04:12:48 7 blanket refusals to fill?

04:12:50 8 **A** No. That was the only board that I felt had a little  
04:12:55 9 bit of a change of their opinion.

04:13:04 10 **Q** Did the DEA ever communicate guidance on blanket  
04:13:09 11 refusals to fill to you?

04:13:10 12 **A** No.

04:13:15 13 **Q** And when Walmart changed its policy on blanket  
04:13:18 14 refusals to fill in 2015, were you involved in that policy  
04:13:24 15 change?

04:13:25 16 **A** Yes, I was.

04:13:27 17 **Q** What was your involvement in the policy change?

04:13:31 18 **A** My involvement would have been telling what -- what  
04:13:40 19 I'd heard at the Texas Board of Pharmacy and, yeah, that  
04:13:44 20 pharmacists have reached out occasionally wanting the  
04:13:52 21 corporation to make some kind of decision for them.

04:13:53 22 **Q** Do you send -- if a pharmacist had reached out  
04:13:56 23 occasionally wanting the corporation to make some kind of  
04:14:00 24 decision for them, could you describe what you mean by that?

04:14:06 25 **A** Pharmacists called us, me, all the time. Sometimes

**Deposition Testimony of Deborah Mack**

04:14:13 1 through their market directors, sometimes through their  
04:14:16 2 regional directors and sometimes they just picked up the  
04:14:17 3 phone and called my office.

04:14:19 4 And I will say occasionally, pharmacists would say I  
04:14:23 5 just wish -- or they would say, can Walmart decide we can't  
04:14:28 6 fill these prescriptions, and I would go through the whole  
04:14:33 7 policy of, you know, you're the pharmacist and you have --  
04:14:39 8 you're at: The store level, you know the patient, you know  
04:14:41 9 the doctors, you're looking at the situation. It's the  
04:14:44 10 pharmacist's decision.

04:14:45 11 Walmart has never told its pharmacists what they had  
04:14:49 12 to do. They've prided themselves in letting the pharmacists  
04:14:54 13 be the pharmacists. Walmart didn't want to be the  
04:14:56 14 pharmacists for them.

04:14:58 15 So that conversation would happen and typically when  
04:15:02 16 we would hang up from that conversation, a pharmacist  
04:15:05 17 understood their role much better and understood that they  
04:15:08 18 really are the ones that are armed with what to do on the  
04:15:15 19 case, you know. Walmart is in Bentonville. They don't  
04:15:18 20 know. And they never -- Walmart never wanted to tell the  
04:15:21 21 pharmacists what to do.

04:15:25 22 **Q** Ms. Mack, you are a registered pharmacist yourself; is  
04:15:30 23 that correct?

04:15:30 24 **A** Yes.

04:15:31 25 **Q** Are you currently registered in Arkansas?

**Deposition Testimony of Deborah Mack**

04:15:40 1 **A** Yes.

04:15:41 2 **Q** In any other states?

04:15:42 3 **A** Texas.

04:15:42 4 **Q** This is an e-mail from Shelley Tustison to you dated  
04:15:47 5 October 22, 2013; correct?

04:15:48 6 **A** Yes.

04:15:48 7 **Q** And at that time, did you supervise Ms. Tustison?

04:15:51 8 **A** Yes.

04:15:52 9 **Q** And just looking at the -- the last sentence in the  
04:15:56 10 first paragraph that begins, "Even after, even after the  
04:16:01 11 pharmacist established that there's a doctor/patient  
04:16:03 12 relationship, the pharmacist is still allowed to refuse a  
04:16:06 13 prescription on an individual prescription basis. No  
04:16:09 14 blanket refusals are allowed by the Boards of Pharmacy."

04:16:15 15 Was that statement, "No blanket" -- the last part of  
04:16:18 16 that statement, "No blanket refusals are allowed by the  
04:16:21 17 Boards of Pharmacy," an accurate statement at this time,  
04:16:24 18 which is 2013?

04:16:25 19 **A** To my knowledge, at that time, there was not a board  
04:16:28 20 that said you can blanket refuse a prescription. But once  
04:16:34 21 again, the first sentence also says, you know, you use your  
04:16:37 22 professional judgment and if you want to refuse a  
04:16:39 23 prescription, you refuse it.

04:16:42 24 And if that doctor writes so many that you've looked  
04:16:45 25 at them, you want to refuse them all, you can refuse them

**Deposition Testimony of Deborah Mack**

04:16:47 1 all.

04:16:47 2 **Q** And, in fact, Walmart in 2015 decided to permit  
04:16:51 3 blanket refusals to fill; is that correct?

04:16:53 4 **A** Yes, they did take it out of the policy and it was  
04:16:59 5 more permitted, but this was 2013. But once again, I don't  
04:17:09 6 know if you're catching my point, but for the 31 years I  
04:17:13 7 worked at Walmart, a pharmacist had the right to refuse to  
04:17:17 8 fill a prescription. And if I looked at 20 of Dr. Smith's  
04:17:22 9 and I knew I wasn't going to fill it for Dr. Smith, at some  
04:17:25 10 point, I would look at them much quicker and know that I  
04:17:29 11 wasn't going to fill them.

04:17:31 12 So there wasn't anything making me think I had to fill  
04:17:36 13 a prescription. I filled based on the knowledge I had  
04:17:40 14 surrounding that patient and that doctor and that  
04:17:42 15 prescription.

04:17:43 16 **Q** What is the basis for Walmart's prohibition on blanket  
04:17:48 17 refusals to fill for pharmacists in Ohio?

04:17:50 18 **A** I don't have the answer to that.

04:17:52 19 **Q** Okay.

04:17:54 20 And we've been talking for a while about blanket  
04:17:56 21 refusals to fill, so now we're talking about corporate  
04:18:00 22 blocks, which as you've explained earlier, are different.

04:18:04 23 Did any representatives from Boards of Pharmacy ever  
04:18:06 24 tell you that corporate blocks were not permitted?

04:18:12 25 **A** Yes.

04:18:15 1 Q And would those be the same Boards of Pharmacy that  
04:18:19 2 you described earlier?

04:18:25 3 So just to clarify, you mentioned Texas, Oregon,  
04:18:30 4 Nevada, Idaho and California. Would those be the same, Ms.  
04:18:37 5 Mack, for communications regarding corporate blocks?

04:18:41 6 A Those would be the same and they would have -- the  
04:18:48 7 discussion would have been around asking what is Walmart  
04:18:53 8 doing, what is a corporate block.

04:18:56 9 And originally, I mean, when that first came out, as  
04:19:03 10 Boards would call and talk about it, we would help them  
04:19:06 11 understand that it varied -- it would be very rare in the  
04:19:13 12 grand scheme of how many prescriptions there are that there  
04:19:15 13 would be a corporate block, and there would have been a lot  
04:19:17 14 of information put into whether to corporate block or not,  
04:19:23 15 it wasn't -- and it wasn't -- it was very -- it was a  
04:19:29 16 process. But yes, those same types of states would have  
04:19:35 17 talked about whether the pharmacist should do that or  
04:19:41 18 Walmart itself could corporate block.

04:19:52 19 THE COURT: Let's go on the headphones for a  
04:19:54 20 second, please.

04:19:58 21 (Proceedings at sidebar:)

04:20:02 22 THE COURT: Okay. I understand there's one  
04:20:04 23 more pharmacist witness from Walgreens.

04:20:10 24 MR. SWANSON: That's correct, Your Honor.

04:20:11 25 THE COURT: Mr. Stoffelmayr, roughly how long

04:20:13 1 do you expect he or she to be?

04:20:15 2 MR. STOFFELMAYR: I think the direct will be  
04:20:17 3 between one and two hours, so we would not expect to finish  
04:20:20 4 the direct today.

04:20:22 5 THE COURT: Well. . .

04:20:24 6 MR. STOFFELMAYR: I'm happy to start or --

04:20:26 7 THE COURT: Then why don't we start and then  
04:20:27 8 when you think it's a convenient break around, I don't know,  
04:20:32 9 5:00, 5:15, somewhere in there, we'll do that.

04:20:36 10 MS. SWIFT: We will do that. Thank you,  
04:20:37 11 Judge.

04:20:37 12 THE COURT: Okay.

04:20:43 13 (Proceedings resumed in open court.)

04:20:43 14 THE COURT: Okay. I think Walgreens has the  
04:20:46 15 next witness. Mr. Stoffelmayr.

04:20:49 16 MR. STOFFELMAYR: Thank you, Your Honor.  
04:20:50 17 Walgreens calls Amy Stossel.

04:21:00 18 THE COURT: Yes, you're metallic.

04:21:02 19 MR. STOFFELMAYR: I thought I had gotten over  
04:21:04 20 whatever the condition was but -- no, that's not me.

04:21:50 21 THE COURT: Good afternoon, Ms. Stossel. If  
04:21:52 22 you could raise your right hand, please.

04:21:54 23 Do you swear or affirm that the testimony you are  
04:21:56 24 about to give will be the truth the whole truth and nothing  
04:21:58 25 but the truth under pain and penalty of perjury?



**Stossel - Direct/Stoffelmayer**

04:22:00 1 THE WITNESS: I do.

04:22:01 2 THE COURT: Thank you.

04:22:01 3 And you may remove your mask while testifying, please.

04:22:04 4 THE WITNESS: Thank you.

04:22:04 5 DIRECT EXAMINATION OF AMY STOSSEL

04:22:10 6 BY MR. STOFFELMAYER:

04:22:10 7 **Q** All right.

04:22:11 8 Good afternoon, Ms. Stossel. You and I have met, but  
04:22:14 9 in case anyone has forgotten over the last five or  
04:22:17 10 six weeks, I'm Kaspar Stoffelmayer again. I represent  
04:22:22 11 Walgreens.

04:22:22 12 Ms. Stossel, why don't you introduce yourself to the  
04:22:25 13 jurors if you would.

04:22:25 14 **A** Hi. I'm Amy Stossel. I'm a pharmacist at Walgreens.

04:22:32 15 **Q** Let's get a couple things out of the way.

04:22:34 16 How long have you been a pharmacist at Walgreens?

04:22:37 17 **A** I've worked at Walgreens for 25 years.

04:22:40 18 **Q** Where do you live?

04:22:41 19 **A** I live in Willoughby, Ohio.

04:22:44 20 **Q** And that, I think everyone knows, that's in  
04:22:46 21 Lake County; correct?

04:22:47 22 **A** Correct.

04:22:48 23 **Q** Where do you work?

04:22:50 24 **A** I work at Walgreens in Willoughby, Ohio, actually.

04:22:53 25 **Q** Okay. Do you have any family?

**Stossel - Direct/Stoffelmayr**

04:22:54 1 **A** I do.

04:22:55 2 **Q** Tell us about them if you would.

04:22:57 3 **A** Sure. Sure.

04:22:58 4 So I have a son, who's 14 years old, and I have a  
04:23:02 5 daughter, who's 15 years old.

04:23:03 6 **Q** Okay. And where did you grow up; also in Lake County?

04:23:06 7 **A** No.

04:23:07 8 Actually, I grew up in Marietta, Ohio, which is in  
04:23:11 9 southern Ohio.

04:23:11 10 **Q** And how does one get from Marietta, Ohio, to  
04:23:15 11 Willoughby, Ohio?

04:23:17 12 **A** Ah-ha.

04:23:18 13 So when I was in college, I met my husband, and he was  
04:23:23 14 from Madison, Ohio. And so after college, I moved to this  
04:23:28 15 area where I've been for about 20 years.

04:23:31 16 **Q** All right.

04:23:31 17 I've put up on the screen just sort of a little  
04:23:35 18 overview of what I want to cover with you this afternoon and  
04:23:38 19 I think we'll end up continuing tomorrow morning.

04:23:41 20 First thing we're going to do is talk a little bit  
04:23:44 21 more about who is Amy Stossel so the jurors can hopefully  
04:23:47 22 get to know you a little bit.

04:23:49 23 The jurors have heard a lot about Walgreens  
04:23:51 24 pharmacists. They've heard from some folks who used to be  
04:23:56 25 working pharmacists at Walgreens but then moved to other

**Stossel - Direct/Stoffelmayr**

04:23:58 1 jobs, but you will be the first time the jurors have  
04:24:01 2 actually met a real life working Walgreens pharmacist. So I  
04:24:05 3 want to spend a little time talking about who you are and  
04:24:09 4 then having you explain to the jurors what is it like to  
04:24:12 5 work as a pharmacist at Walgreens.

04:24:15 6 And the then last thing is we'll talk about what goes  
04:24:17 7 on when you fill a controlled substances prescription at  
04:24:21 8 Walgreens, which, again, the jurors have heard a lot about  
04:24:24 9 but they haven't heard about it from the perspective of a  
04:24:27 10 pharmacist who's actually filling those prescriptions. All  
04:24:29 11 right?

04:24:29 12 **A** Okay. Sure.

04:24:30 13 **Q** Okay.

04:24:31 14 A little more about who is Amy Stossel. Why did you  
04:24:35 15 decide to become a pharmacist in the first place?

04:24:37 16 **A** So when I was in high school, I actually went to my  
04:24:45 17 local hospital where they had kind of like a candy striper  
04:24:51 18 program. It was called Medical Explorers.

04:24:52 19 One of my friends and I volunteered at our hospital.  
04:24:54 20 I had to be like a freshman or sophomore in high school, and  
04:24:58 21 we went around to different areas of the hospital and  
04:25:00 22 volunteered.

04:25:01 23 One of the areas was in nursing. And then one day,  
04:25:06 24 there were no slots available to volunteer in the nursing,  
04:25:10 25 and I ended up in the pharmacy of the hospital. They kind

**Stossel - Direct/Stoffelmayr**

04:25:13 1 of really liked it. It was interesting, and it really. . .  
04:25:20 2 it really caught my attention. I really liked it, and it  
04:25:25 3 was very interesting to me so. . . that was what really  
04:25:31 4 caught my eye.

04:25:31 5 **Q** So did you then go to college to study pharmacy?

04:25:35 6 **A** I did. I went.

04:25:36 7 **Q** Where did you go?

04:25:38 8 **A** Yeah, I went to Ohio Northern University.

04:25:40 9 **Q** Did you like it there?

04:25:41 10 **A** I did, yeah.

04:25:44 11 **Q** You said -- jump ahead a little bit. But when you  
04:25:47 12 were -- well, tell us about the pharmacy program. Did you  
04:25:50 13 do like a bachelor's degree and then pharmacy school? Was  
04:25:54 14 it -- go straight through, because I've heard there's all  
04:25:56 15 kinds of different ways to end up with a pharmacy degree.

04:25:59 16 **A** Yeah.

04:25:59 17 So when I was in college, actually the program was a  
04:26:03 18 five-year program. And one of the reasons why I chose Ohio  
04:26:07 19 Northern University was because it was what's called a  
04:26:10 20 zero-to-five program.

04:26:12 21 So when you apply to pharmacy school, you got into the  
04:26:18 22 pharmacy program at the very beginning and you started off  
04:26:22 23 in the program all the way through. You were already in the  
04:26:26 24 pharmacy program. You didn't have to apply once you got in  
04:26:29 25 the program.

**Stossel - Direct/Stoffelmayr**

04:26:29 1 Q What time period are we talking about? When did you  
04:26:32 2 graduate from Ohio Northern?

04:26:33 3 A Oh, sure. I graduated from high school in 1991. So I  
04:26:38 4 started college in 1991 and graduated from college in 1996.

04:26:41 5 Q All right.

04:26:42 6 And just to preview some of the topics we're going to  
04:26:45 7 talk about later, when you were in pharmacy school at Ohio  
04:26:48 8 Northern, did you learn about things like the corresponding  
04:26:53 9 responsibility rules for pharmacists?

04:26:54 10 A Yes.

04:26:55 11 Q Did you learn about topics like red flags and how to  
04:26:59 12 resolve them?

04:26:59 13 A Yes.

04:27:02 14 Q Just so we -- you know, I guess, know where you're  
04:27:07 15 coming from, what does that mean to you? When we say a red  
04:27:10 16 flag, in your practice as a pharmacist, not in court but in  
04:27:12 17 your real practice as a pharmacist, what does that mean to  
04:27:15 18 you?

04:27:15 19 A So, a red flag is just a reason I might be  
04:27:18 20 uncomfortable with filling a prescription.

04:27:23 21 Q Did they -- how did they teach you about red flags or  
04:27:27 22 things that make you uncomfortable? How do you learn about  
04:27:29 23 that when you go to pharmacy school?

04:27:31 24 A So in my last year of pharmacy school, I had one  
04:27:33 25 specific class that we really talked about this a lot and

**Stossel - Direct/Stoffelmayr**

04:27:39 1 that class was a pharmacy in ethics class. We talked about  
04:27:43 2 red flags quite a bit in that class.

04:27:44 3 **Q** When you go to pharmacy school, do you have -- I know  
04:27:47 4 we've heard from other folks about rotations and about  
04:27:50 5 internships, but do you also have like a lab class?

04:27:53 6 **A** Yeah.

04:27:53 7 There were a lot of lab classes in college, actually.

04:27:56 8 **Q** And did any of those touch on topics like dispensing  
04:28:00 9 controlled substances and how to recognize if a prescription  
04:28:03 10 raises concerns or it's okay to go ahead and fill it?

04:28:06 11 **A** Yeah, we actually had a class called a pharmacy  
04:28:10 12 practice lab class that we did a lot of that in that class.

04:28:17 13 **Q** After pharmacy school, you did an internship; correct?

04:28:21 14 **A** Um-hmm.

04:28:21 15 **Q** Where did you do your internship?

04:28:23 16 **A** At Walgreens.

04:28:24 17 **Q** Where -- where was that Walgreens? Was it over near  
04:28:27 18 Toledo or where?

04:28:28 19 **A** No. That Walgreens was in Maple Heights.

04:28:30 20 **Q** Okay. And then when did you take your pharmacy boards  
04:28:35 21 to get your license?

04:28:36 22 **A** I took those pharmacy boards in 1996, in the summer.

04:28:40 23 **Q** Did you pass?

04:28:41 24 **A** I did.

04:28:41 25 **Q** First time?

**Stossel - Direct/Stoffelmayr**

04:28:42 1 **A** I did.

04:28:43 2 **Q** Okay.

04:28:43 3 **A** Yes.

04:28:45 4 **Q** Have -- as a -- have you ever worked anywhere since  
04:28:48 5 pharmacy school other than at a Walgreens?

04:28:51 6 **A** No. No, I've worked at -- started at Walgreens and  
04:28:54 7 I've never left.

04:28:55 8 **Q** What made you choose Walgreens?

04:28:58 9 **A** So a couple different things.

04:29:01 10 My husband graduated a year before me in pharmacy  
04:29:05 11 school. He started off in Drug Mart and he was working 12  
04:29:12 12 and 13-hour days at Drug Mart. He would come home really  
04:29:16 13 exhausted from those long days. And so at Walgreens, when I  
04:29:19 14 interviewed, most of the shifts at Walgreens were eight-hour  
04:29:23 15 days. I really liked the prospect of just working an  
04:29:27 16 eight-hour day. So that was one of the reasons.

04:29:30 17 I also liked the different locations of the stores at  
04:29:33 18 Walgreens. So that was another reason why I chose to work  
04:29:37 19 there.

04:29:37 20 **Q** In all your time at Walgreens, has it -- has it lived  
04:29:41 21 up to your expectations as to what they told you it would be  
04:29:43 22 like?

04:29:43 23 **A** Yeah, it definitely has.

04:29:45 24 **Q** What do you like most about being a Walgreens  
04:29:48 25 pharmacist?

**Stossel - Direct/Stoffelmayr**

04:29:48 1 **A** So I really like dealing with all of the different  
04:29:53 2 people that come into my stores.

04:29:56 3 Over the years, I've seen a really diverse group of  
04:29:59 4 people come into all of my different locations that I've  
04:30:02 5 worked at. I work with some really great people, store  
04:30:09 6 managers, technicians. I've encountered some really great  
04:30:13 7 other employees that I've worked with at Walgreens.

04:30:16 8 **Q** I know you've worked at a bunch of different stores  
04:30:18 9 over the years, and we don't have to map out by store  
04:30:22 10 number, store number, but can you just give us a sense, over  
04:30:25 11 your time at Walgreens, how much of that time was spent in  
04:30:29 12 stores at Lake County versus other counties in the area?

04:30:31 13 **A** Sure. I've probably spent about half of my time in  
04:30:34 14 Lake County.

04:30:34 15 **Q** Where would you have worked at the other half?

04:30:37 16 **A** The other half, I've worked in Cuyahoga County.

04:30:41 17 **Q** Kind of the eastern end, closer to Lake County or  
04:30:43 18 where?

04:30:44 19 **A** Yeah. Most of the time when I wasn't in Lake County,  
04:30:46 20 I worked in Euclid, Ohio.

04:30:49 21 **Q** At some point during your Walgreens career, did you  
04:30:52 22 get promoted to pharmacy manager?

04:30:55 23 **A** I did.

04:30:55 24 **Q** How quickly did that happen?

04:30:57 25 **A** I was a pharmacist for about a year and a half, two



**Stossel - Direct/Stoffelmayer**

04:31:03 1 years. And then I got promoted to a pharmacy manager.

04:31:05 2 **Q** And how long did you work as a pharmacy manager?

04:31:07 3 **A** I would say probably four or five years.

04:31:10 4 **Q** Okay. Then what, you got demoted? How come you went  
04:31:14 5 back to being a pharmacist?

04:31:15 6 **A** I actually started a family. I had my kids and so I  
04:31:20 7 switched to more of a part-time role and didn't work as a  
04:31:26 8 pharmacist manager during those years.

04:31:27 9 **Q** So in a part time role, you couldn't be a pharmacist  
04:31:30 10 manager, you had to step back to a staff pharmacist?

04:31:32 11 **A** Right.

04:31:33 12 As a pharmacist manager, the Ohio law says that you  
04:31:36 13 have to spend the majority of your time in the store and be  
04:31:42 14 the primary pharmacist in that store, and in a part time  
04:31:46 15 role, you wouldn't be able to be the primary pharmacist in  
04:31:50 16 the store location.

04:31:51 17 **Q** Are you working full time today?

04:31:53 18 **A** I am.

04:31:54 19 **Q** All right. Tell us what we're looking at on the  
04:32:00 20 screen there.

04:32:00 21 **A** So this is a photo of my concurrent location in  
04:32:05 22 Willoughby. That's the store that I work at today.

04:32:07 23 **Q** How long have you worked at this store on SOM Center  
04:32:11 24 Road in Willoughby?

04:32:12 25 **A** I've been at this location for about four years.

**Stossel - Direct/Stoffelmayr**

04:32:14 1 Q I've seen a lot of pictures, been to a lot of  
04:32:17 2 Walgreens, I've seen a lot of pictures of Walgreens. This  
04:32:20 3 is not the fanciest Walgreens in the State of Ohio.

04:32:23 4 Is it a good place to work?

04:32:24 5 A It is. It's a great store to work at.

04:32:27 6 Q What makes it a great store to work at?

04:32:29 7 A I have a great team at this location. It's a very  
04:32:33 8 busy location, which I like.

04:32:34 9 Q Why do you like that, being at a busy store versus  
04:32:37 10 somewhere a little more laid back?

04:32:38 11 A I see a lot of patients at this store. One of the  
04:32:41 12 reasons that I went to pharmacy school in the first place  
04:32:43 13 was to help people, and I can help a lot of different people  
04:32:48 14 at this location because we see so many.

04:32:50 15 Q I notice it says 24 hours, but it doesn't say 24-hour  
04:32:55 16 pharmacy. Is it a 24-hour store or a 24-hour pharmacy?

04:32:58 17 What -- what's the store -- what are the store hours?

04:33:00 18 A So this is a 24-hour store location, but the pharmacy  
04:33:06 19 is not open 24 hours. Our pharmacy hours currently are 9:00  
04:33:12 20 a.m. to 9:00 p.m.

04:33:13 21 Q If -- if the pharmacy is open, 8:00 p.m. at night or  
04:33:19 22 middle of the day, does there have to be a pharmacist there  
04:33:23 23 on duty?

04:33:24 24 A Correct. If there -- the pharmacy is open, a  
04:33:27 25 pharmacist must be there.

**Stossel - Direct/Stoffelmayr**

04:33:28 1 **Q** If a pharmacist calls in sick and they can't find a  
04:33:32 2 replacement, can they open that pharmacy?

04:33:34 3 **A** No.

04:33:36 4 **Q** Now, one day a week, you work at a different location;  
04:33:39 5 correct?

04:33:39 6 **A** Correct.

04:33:39 7 **Q** What's -- what's that about? What's that like?

04:33:42 8 **A** So one day a week, I work at our specialty pharmacy,  
04:33:45 9 which is located in downtown Cleveland on Chester Avenue.

04:33:49 10 **Q** What is a specialty pharmacy? What does that mean?

04:33:52 11 **A** So, a specialty pharmacy deals with medications which  
04:33:56 12 might be a little bit more expensive but are tailored to  
04:34:00 13 specific medical conditions.

04:34:04 14 A lot of those medications are limited distribution  
04:34:07 15 drugs, which means that they can only be distributed to  
04:34:13 16 certain locations and certain stores.

04:34:15 17 **Q** Are those some of the kinds of medications that are  
04:34:18 18 very special handling requirements, like refrigeration or  
04:34:21 19 things like that?

04:34:22 20 **A** They can be, yes.

04:34:25 21 **Q** All right.

04:34:26 22 Let's go back to a regular pharmacy, like your  
04:34:29 23 pharmacy in Willoughby. And I want to ask you a few  
04:34:33 24 questions about when the pharmacy orders medications. Okay?

04:34:35 25 **A** Sure.

**Stossel - Direct/Stoffelmayr**

04:34:37 1 **Q** Now, I think we heard a little bit about this but  
04:34:41 2 probably weeks ago, there is an inventory management system  
04:34:45 3 called SIMS; correct?

04:34:47 4 **A** Yes, correct.

04:34:48 5 **Q** Am I right that SIMS will automatically place orders  
04:34:51 6 for the pharmacy based on what the computer system thinks is  
04:34:54 7 the right inventory level?

04:34:56 8 **A** Correct.

04:34:57 9 **Q** So if it thinks you're supposed to have a hundred  
04:35:00 10 pills and it sees that you're down to 40 pills, it will  
04:35:03 11 order 60 for you; correct?

04:35:05 12 **A** Correct.

04:35:06 13 **Q** I'm sure that's an oversimplified example, but things  
04:35:09 14 like that?

04:35:10 15 **A** Um-hmm.

04:35:10 16 **Q** Now, if you want to -- let's start with non-controlled  
04:35:13 17 substances, say it's amoxicillin.

04:35:16 18 Say all the preschoolers in town are sick and you need  
04:35:19 19 more amoxicillin. Can you as a pharmacist on SOM Center  
04:35:24 20 Road go into the system and order more amoxicillin for the  
04:35:27 21 store?

04:35:27 22 **A** Yes.

04:35:28 23 **Q** Is there a -- any check on your ability to get more  
04:35:31 24 antibiotics for the preschoolers?

04:35:33 25 **A** No. I can go in and place the order.

**Stossel - Direct/Stoffelmayr**

04:35:35 1 Q All right.

04:35:35 2 What about it's a controlled substance? If you have a  
04:35:39 3 new patient and suddenly you need more morphine than you  
04:35:44 4 generally have in stock, can you just go to the computer  
04:35:48 5 system and say double our morphine order?

04:35:51 6 A No. It's a little more complicated.

04:35:52 7 Q Tell us what happens.

04:35:54 8 A So in order to place an order for additional  
04:35:58 9 controlled substances, you do have to go into another part  
04:36:04 10 of our computer system and request to order more of that  
04:36:12 11 particular medication.

04:36:13 12 Q And is that request just automatically granted?

04:36:17 13 A No. You --

04:36:18 14 Q What happens?

04:36:19 15 A You would request to order, let's say, two additional  
04:36:24 16 bottles of Adderall and you would get a message back  
04:36:32 17 immediately saying order approved or order not approved.

04:36:35 18 Q Do you have any insight into what the limit is for  
04:36:40 19 whether the order is going to be approved or whether you've  
04:36:44 20 ordered too much and it gets not approved?

04:36:46 21 A No, not at all.

04:36:47 22 Q Do you have any way of finding out what the limit is?  
04:36:49 23 Could you ask somebody?

04:36:50 24 A No, not that I know of.

04:36:51 25 Q All right.

**Stossel - Direct/Stoffelmayr**

04:36:52 1 If it says order not approved but you've got a patient  
04:36:54 2 who needs that Adderall or needs that morphine, what are you  
04:36:57 3 going to do next?

04:36:58 4 **A** So, if it says order not approved, then I would have  
04:37:01 5 to send a request to my direct supervisor and I would have  
04:37:08 6 to fill out a form that would state exactly why I needed to  
04:37:13 7 order more of this medication.

04:37:15 8 **Q** And what happens next?

04:37:18 9 **A** So that request, I believe, goes to the supervisor and  
04:37:24 10 then it would also go to our corporate integrity department.

04:37:29 11 **Q** And that's at the corporate offices in Illinois  
04:37:31 12 somewhere?

04:37:31 13 **A** Um-hmm.

04:37:32 14 **Q** Okay. And what do they do?

04:37:34 15 **A** They would either approve or deny that request.

04:37:37 16 **Q** Do they ever actually deny it or is it more of a  
04:37:40 17 rubber stamp situation?

04:37:42 18 **A** No, it actually gets denied. I had one recently that  
04:37:45 19 got denied.

04:37:46 20 **Q** And what did you do? How did you -- what did you do  
04:37:50 21 for the patient if you couldn't order extra controlled  
04:37:52 22 substances that they needed?

04:37:53 23 **A** So I had to turn the patient away.

04:37:56 24 **Q** What was the medication in that case?

04:37:58 25 **A** It was called Datrana. It's actually a patch that a

**Stossel - Direct/Stoffelmayr**

04:38:02 1 patient would wear for methylphenidate, which is a like an  
04:38:09 2 Adderall stimulant medication.

04:38:11 3 **Q** Okay. That actually raises a -- you mentioned  
04:38:14 4 Adderall a couple times. We've been talking in this case  
04:38:17 5 about controlled substances and mostly talking about  
04:38:20 6 opioids, but what are some other controlled substances  
04:38:23 7 besides opioids?

04:38:24 8 **A** Sure. So there are some different classes of  
04:38:28 9 controlled substances. Some are benzodiazapines, like  
04:38:34 10 Valium or Xanax. Those might be some that you've heard of.  
04:38:40 11 There are also anabolic steroids, like testosterone. There  
04:38:47 12 are also -- there's a controlled substance that's an  
04:38:49 13 antidiarrheal medication. So there are many different types  
04:38:54 14 of controlled substances.

04:38:56 15 **Q** Since the day you left pharmacy school, have you  
04:39:00 16 always known that controlled substances come with the risk  
04:39:03 17 of addiction and abuse?

04:39:04 18 **A** Yes.

04:39:06 19 **Q** Since the day you left pharmacy school, have you  
04:39:09 20 always known that controlled substances raise concerns about  
04:39:12 21 diversion?

04:39:13 22 **A** Yes.

04:39:16 23 **Q** In the course of your practice, say in the course of a  
04:39:19 24 day or a week, just ballpark, what percentage of the  
04:39:23 25 prescriptions you fill are for controlled substances at a

**Stossel - Direct/Stoffelmayr**

04:39:26 1 store like your store on SOM Center Road?

04:39:30 2 **A** I mean, I would say maybe 10 percent.

04:39:37 3 **Q** And the rest of your prescriptions would be  
04:39:39 4 non-controlled substances of all kinds?

04:39:40 5 **A** Correct.

04:39:40 6 **Q** What are the -- out of curiosity, at your store like  
04:39:45 7 on SOM Center Road, what are the prescriptions you fill most  
04:39:48 8 for these noncontrolled substance, what do you see people  
04:39:51 9 come in for?

04:39:51 10 **A** For noncontrolled substances?

04:39:53 11 **Q** Yeah.

04:39:53 12 **A** Diabetes medications, blood pressure medications.  
04:39:56 13 Those are the big ones at my location.

04:40:02 14 **Q** So your store, I'm not going to ask you to tell  
04:40:05 15 everyone your home address, but how far away from the store  
04:40:07 16 do you live?

04:40:07 17 **A** I live about 10 minutes from my store.

04:40:09 18 **Q** And that's where you're raising your teenage kids?

04:40:12 19 **A** Um-hmm.

04:40:17 20 **Q** Is it -- has there ever been a time when you weren't  
04:40:21 21 concerned about the diversion of controlled substances or  
04:40:23 22 opioids in the community where you're raising your kids?

04:40:26 23 **A** No, not at all.

04:40:28 24 **Q** Have you ever worked with a Walgreens pharmacist who  
04:40:31 25 you thought wasn't concerned about diversion into the



**Stossel - Direct/Stoffelmayr**

04:40:34 1 community where they live and raise their families?

04:40:36 2 **A** No.

04:40:37 3 **Q** Have you ever had a manager or a field leadership or  
04:40:44 4 anyone in the chain of command at Walgreens who you thought  
04:40:46 5 wasn't concerned about drug diversion in your community?

04:40:49 6 **A** No.

04:40:49 7 **Q** If you felt that way, would you still work at  
04:40:51 8 Walgreens?

04:40:52 9 **A** No, probably not.

04:40:53 10 **Q** All right.

04:40:58 11 We're going to -- I want to talk about a number of  
04:41:01 12 topics. This is just sort of a high-level list of topics  
04:41:05 13 we're going to hit between now and sometime tomorrow morning  
04:41:07 14 when you get off the stand. Talk about training.

04:41:11 15 We'll talk about OARRS. The jury's heard a lot about  
04:41:15 16 OARRS but we want to talk about your experience. Want to  
04:41:17 17 hear about what actually goes on when you fill a  
04:41:20 18 prescription, red flags, refusals, and then we'll end up  
04:41:23 19 talking a little bit about some of your -- some of your  
04:41:25 20 stories about working with law enforcement and, finally, the  
04:41:29 21 drug disposal topics, which people have heard about.

04:41:32 22 Let's start with training. When you joined -- so you  
04:41:37 23 joined Walgreens 1996/97?

04:41:40 24 **A** That's correct, 1996.

04:41:42 25 **Q** Was there any kind of new hire training you had to go

**Stossel - Direct/Stoffelmayr**

04:41:45 1 through at Walgreens?

04:41:46 2 **A** Yes.

04:41:47 3 **Q** We heard from another witness that today. It's a full  
04:41:50 4 two weeks of new hire training. Was it that intense back  
04:41:53 5 then?

04:41:53 6 **A** I don't believe so. I don't remember the specifics,  
04:41:56 7 but I don't think it was two weeks.

04:41:59 8 **Q** Was it more than a day, more than an afternoon?

04:42:02 9 **A** I believe that it was a few days.

04:42:03 10 **Q** And did that new hire training, in the '90s, already  
04:42:08 11 cover controlled substances dispensing?

04:42:10 12 **A** Yes.

04:42:11 13 **Q** Since -- since that time, since you joined the  
04:42:15 14 company, do you have to do continuing education as a  
04:42:17 15 pharmacist?

04:42:17 16 **A** Yes.

04:42:18 17 **Q** Are you allowed to choose the continuing education  
04:42:21 18 topics that are most important to you for your practice?

04:42:24 19 **A** Yes.

04:42:26 20 **Q** Do those ever include controlled substances topics?

04:42:30 21 **A** Yes, um-hmm.

04:42:32 22 **Q** It's a -- you have to do, like, so many hours for  
04:42:35 23 every year or every two years of continuing education?

04:42:37 24 **A** Correct.

04:42:38 25 **Q** Correct?

**Stossel - Direct/Stoffelmayr**

04:42:38 1 **A** Yes.

04:42:39 2 **Q** Is there a requirement that some of those hours cover  
04:42:43 3 legal obligations and that sort of thing?

04:42:45 4 **A** Yes. So after --

04:42:47 5 **Q** Tell us about that. Yeah.

04:42:48 6 **A** Yeah.

04:42:49 7 So every two years, as a pharmacist, you're required  
04:42:51 8 to complete continuing education hours. Every two years,  
04:42:55 9 you have to complete 40 hours of continuing education. Two  
04:43:03 10 of those hours, every two years, have to be on the law  
04:43:06 11 topics.

04:43:07 12 **Q** And do those law topics sometimes involve controlled  
04:43:10 13 substances?

04:43:10 14 **A** Correct.

04:43:12 15 **Q** Since you joined Walgreens, have you done any further  
04:43:17 16 company organized training on controlled substances  
04:43:20 17 dispensing?

04:43:20 18 **A** Yes.

04:43:20 19 **Q** Tell us a little bit about that.

04:43:22 20 **A** So there are -- within our computer system, there is a  
04:43:30 21 learning and talent management portal where we receive  
04:43:34 22 training through Walgreens. We will receive training in  
04:43:41 23 this portal on certain topics, and over this time that I've  
04:43:47 24 been a pharmacist, we've received training in that portal on  
04:43:52 25 a number of times for good faith dispensing or for

**Stossel - Direct/Stoffelmayr**

04:43:59 1 controlled substances.

04:44:00 2 **Q** So the jury heard -- again, this is a couple weeks  
04:44:04 3 ago, or maybe more now -- about a time period when Walgreens  
04:44:08 4 decided that it was going to change the way training  
04:44:14 5 happened so they would implement a special periodic training  
04:44:17 6 program, say 2012, 2013.

04:44:20 7 If you think back to the periods you worked at  
04:44:22 8 Walgreens before that, so 1996 up to 2010, '11, '12, was  
04:44:26 9 there any training on controlled substances dispensing going  
04:44:29 10 on back then?

04:44:30 11 **A** Yes.

04:44:31 12 **Q** So this wasn't something brand new for you when the  
04:44:34 13 new training started in 2012 or 13?

04:44:36 14 **A** No.

04:44:39 15 **Q** What about when the company's controlled substances  
04:44:44 16 dispensing policies get updated, how do you find out about  
04:44:46 17 that?

04:44:47 18 **A** So there are a number of ways in Walgreens that you  
04:44:52 19 can find out about different policies. Sometimes we'll  
04:44:54 20 receive e-mails. Sometimes my direct pharmacy manager will  
04:45:00 21 tell me about different policies that have been updated.

04:45:05 22 There's also, in our computer system, another place  
04:45:11 23 called Compass and Compass is where we receive a lot of our  
04:45:15 24 company information and those policy updates will, a lot of  
04:45:21 25 time, be in this place called Compass where that company

**Stossel - Direct/Stoffelmayr**

04:45:25 1 policy or company information resides.

04:45:28 2 **Q** Have there been occasions whether there was a  
04:45:32 3 significant update to policies where you had to do a  
04:45:34 4 particular training module on the new policy to make sure  
04:45:36 5 you understood it?

04:45:36 6 **A** Yes.

04:45:37 7 **Q** How often does that happen?

04:45:40 8 **A** It happens all the time. Any time that there is a  
04:45:44 9 change in policy, any time that there is a new policy that  
04:45:50 10 comes about, there are some new training modules that come  
04:45:54 11 in that learning and talent management portal, and then  
04:45:58 12 those trainings are required by us to be completed.

04:46:01 13 **Q** And if you don't complete it, what happens?

04:46:04 14 **A** I'm not sure. I always get mine completed, so. . . I  
04:46:09 15 don't know.

04:46:09 16 **Q** You sound like a rule follower. Okay. All right.  
04:46:13 17 Let me shift gears, and we'll talk to you a little bit about  
04:46:16 18 OARRS.

04:46:17 19 And the jury has heard a lot about what OARRS is and  
04:46:20 20 what it looks like, but I just want to ask you about your  
04:46:24 21 personal experiences with it. Okay?

04:46:25 22 **A** Um-hmm.

04:46:26 23 **Q** When you started practicing pharmacy in the late '90s,  
04:46:31 24 did OARRS exist?

04:46:32 25 **A** No.

**Stossel - Direct/Stoffelmayr**

04:46:33 1 **Q** Do you know if anything even remotely like OARRS  
04:46:37 2 existed any states in the country from what they taught you  
04:46:39 3 in school?

04:46:40 4 **A** No.

04:46:42 5 **Q** The jury has heard that in 2011, the Board of Pharmacy  
04:46:46 6 rules changed to require a pharmacist to check OARRS for  
04:46:50 7 certain kinds of prescriptions.

04:46:51 8 Do you remember that?

04:46:52 9 **A** Yes.

04:46:55 10 **Q** Before 2011, when it became required to use OARRS, did  
04:47:02 11 you ever use OARRS?

04:47:03 12 **A** Yeah, I did.

04:47:09 13 **Q** When did you first get access to OARRS?

04:47:11 14 **A** So I actually got access to OARRS back in May of 2009,  
04:47:17 15 but I applied much earlier than that.

04:47:19 16 **Q** What do you mean? Explain that. You had to apply to  
04:47:21 17 get access to OARRS? Couldn't Walgreens just hand it to  
04:47:24 18 you, say it's on the computer now, go ahead and use it?

04:47:26 19 **A** Yeah. It wasn't a Walgreens application process. It  
04:47:32 20 was an application process through the State Board of  
04:47:37 21 Pharmacy.

04:47:37 22 So I had to actually apply through the State Board of  
04:47:41 23 Pharmacy in order to obtain access to OARRS.

04:47:44 24 **Q** When did you first apply to the Board of Pharmacy to  
04:47:49 25 get access?

**Stossel - Direct/Stoffelmayr**

04:47:49 1 **A** It was April of 2008.

04:47:50 2 **Q** Forgive me for asking, but how do you remember April  
04:47:54 3 of 2008? That's pretty impressive?

04:47:56 4 **A** I know. I actually -- I actually looked it up to see  
04:47:58 5 when I applied. I still have the e-mails from the State  
04:48:03 6 Board of Pharmacy.

04:48:04 7 **Q** All right. So you applied in 2008. And when did they  
04:48:07 8 give you access?

04:48:08 9 **A** It was May -- May of 2009. I actually got an e-mail  
04:48:14 10 that told me your access has been approved.

04:48:16 11 **Q** Why did it take a year for you to get access to OARRS?

04:48:20 12 **A** I don't know.

04:48:20 13 **Q** Was it anything -- Walgreens have anything do with the  
04:48:23 14 delay?

04:48:24 15 **A** No.

04:48:25 16 All of that was through the State Board of Pharmacy.  
04:48:27 17 It was independent of Walgreens.

04:48:29 18 **Q** So why -- if it wasn't required to use OARRS back  
04:48:33 19 then, why would you want access to OARRS? What made you do  
04:48:36 20 that?

04:48:37 21 **A** Well, I mean, I guess I'm kind of a geek, but it was  
04:48:43 22 exciting when OARRS became available. So OARRS, as you  
04:48:51 23 know, has all of the information that patients have for  
04:48:57 24 controlled substances. So any prescriptions that they've  
04:49:01 25 filled for controlled substances would all be listed in that

**Stossel - Direct/Stoffelmayr**

04:49:05 1 OARRS report.

04:49:07 2 Prior to having OARRS, that information was not  
04:49:13 3 directly available within one screen on a computer. There  
04:49:18 4 was a lot more leg work that needed to be done in order to  
04:49:22 5 obtain that information prior to filling a prescription. So  
04:49:27 6 to have all of that on one screen was kind of exciting.

04:49:30 7 **Q** For you in your practice, was getting access to OARRS  
04:49:36 8 back then, was it something that meant it took you longer to  
04:49:39 9 fill a prescription or something that actually saved you  
04:49:40 10 time?

04:49:41 11 **A** Yeah, it would save you some time to --

04:49:44 12 **Q** Explain how it would save time. Because now you're  
04:49:47 13 going on a computer screen and doing all that.

04:49:51 14 **A** Well, with OARRS, of course, you're logging in, you're  
04:49:54 15 putting in some information in order to generate the OARRS  
04:50:01 16 report and pull it up on the screen.

04:50:02 17 So, yes, that takes a little bit of time. But prior  
04:50:06 18 to OARRS, if I had a question about a patient's medication,  
04:50:13 19 let's say they were bringing in a prescription to me and I  
04:50:18 20 wasn't certain that I had the full history in my Walgreens  
04:50:21 21 computer, maybe there was a gap in their history and I  
04:50:26 22 wasn't certain, gosh, they've gotten a prescription here in  
04:50:32 23 January and in March, but where's their February  
04:50:36 24 prescription, where were they filling it. And I needed to  
04:50:41 25 fill in that gap for myself, I might have to call the CVS



**Stossel - Direct/Stoffelmayr**

04:50:45 1 next door to me and say, hey, do you have this gentleman on  
04:50:48 2 file, did you fill a prescription for this gentleman in  
04:50:50 3 February, where were they getting their prescription filled?

04:50:54 4 And so it takes far longer to call a CVS next to me  
04:51:00 5 and wait on hold and try to obtain that information or try  
04:51:03 6 to call the prescriber's office to see, did you issue a  
04:51:06 7 prescription for this person in February than it is to just  
04:51:15 8 pull up that OARRS report.

04:51:16 9 **Q** So even pharmacists have to wait on hold when they  
04:51:18 10 call the pharmacy?

04:51:19 11 **A** Yes. Yes, we do.

04:51:20 12 **Q** Okay. I thought you had like a code.

04:51:23 13 When you went to get access to OARRS in the 4018 --  
04:51:28 14 I'm sorry, 2008/2009 time period, were there any other  
04:51:33 15 Walgreens pharmacists who were getting access to OARRS that  
04:51:36 16 you knew about?

04:51:36 17 **A** I'm sure there were.

04:51:38 18 I know my husband did, but I'm sure there were.

04:51:40 19 **Q** Was your husband working at Walgreens during that  
04:51:43 20 time?

04:51:43 21 **A** He was.

04:51:44 22 **Q** He had left Discount Drug Mart?

04:51:47 23 **A** He did, yes.

04:51:47 24 **Q** Did Walgreens ever do anything to try to discourage  
04:51:50 25 you or your husband or other Walgreens pharmacists from

**Stossel - Direct/Stoffelmayr**

04:51:52 1 getting on OARRS before it was required?

04:51:54 2 **A** No.

04:51:56 3 **Q** We heard that there were some pharmacies where the  
04:52:00 4 computer system, a pharmacist would work at, would, you  
04:52:04 5 know, not allow them to check OARRS from the pharmacy  
04:52:07 6 computer system, so they might have to use their phones or  
04:52:10 7 something like that.

04:52:12 8 At Walgreens, were you able, right from the beginning,  
04:52:15 9 to access OARRS through the computer terminal you work at?

04:52:18 10 **A** Yes.

04:52:21 11 **Q** Ever since you got access to OARRS in 2009, was there  
04:52:25 12 ever a time when anyone at Walgreens told you they thought  
04:52:29 13 it wasn't a good idea, they didn't want you checking OARRS,  
04:52:33 14 anything like that?

04:52:34 15 **A** No.

04:52:34 16 **Q** Anyone ever tell you it was too expensive or took too  
04:52:37 17 long?

04:52:37 18 **A** No.

04:52:39 19 **Q** All right.

04:52:42 20 MR. STOFFELMAYR: Your Honor, if it's all  
04:52:43 21 right, I'll cover one more topic and that will get us  
04:52:46 22 between 5:00 and 5:15.

04:52:48 23 THE COURT: That's good.

04:52:49 24 BY MR. STOFFELMAYR:

04:52:50 25 **Q** All right.

**Stossel - Direct/Stoffelmayr**

04:52:50 1 Ms. Stossel, since you joined Walgreens back in 2006,  
04:52:55 2 has Walgreens always had policies on controlled substances  
04:52:59 3 dispensing?

04:53:00 4 **A** Yes.

04:53:01 5 **Q** At Walgreens, do they call that good faith dispensing  
04:53:04 6 policies?

04:53:04 7 **A** Yes.

04:53:05 8 **Q** All right. Let me show you one of these.

04:53:15 9 Your Honor -- and I've got copies for everybody --  
04:53:17 10 this is exhibit WAG-MDL-18. It's already in evidence.

04:53:40 11 MR. STOFFELMAYR: Your Honor, may I approach  
04:53:41 12 the witness?

04:53:41 13 THE COURT: Sure.

04:53:44 14 MR. STOFFELMAYR: Mr. Pitts, may I give you a  
04:53:46 15 copy for the Judge?

04:53:59 16 BY MR. STOFFELMAYR:

04:54:00 17 **Q** But my colleague, who is listening more carefully than  
04:54:02 18 I am speaking, pointed out that I said you started at  
04:54:05 19 Walgreens in 2006. That's not correct, is it?

04:54:08 20 **A** Oh, no. I'm sorry. 1996.

04:54:10 21 **Q** That's what I thought I said, but apparently not.

04:54:14 22 Do you have in front of you -- it's the same document  
04:54:18 23 that's on the screen -- Exhibit 18, a 1998 version of the  
04:54:22 24 Good Faith Dispensing Policy?

04:54:24 25 **A** Correct.

**Stossel - Direct/Stoffelmayr**

04:54:25 1 **Q** All right.

04:54:25 2 And I just want to focus us for a second, we're not  
04:54:28 3 going to spend too long on this document, on this list here.

04:54:33 4 Is this a list of circumstances that, in your  
04:54:37 5 parlance, in your practice, you might think of as red flags?

04:54:40 6 **A** Yes.

04:54:41 7 **Q** When you got a policy like this in 1998, was it  
04:54:47 8 telling you anything you didn't already know from pharmacy  
04:54:49 9 school?

04:54:50 10 **A** No.

04:54:55 11 **Q** Did you ever see this? When Walgreens would give you  
04:54:58 12 a policy like this, did you ever see it as a complete list  
04:55:02 13 of the only circumstances that would make you uncomfortable  
04:55:05 14 filling a prescription?

04:55:06 15 **A** No.

04:55:08 16 **Q** In your training in pharmacy school and your practice,  
04:55:11 17 have you ever limited yourself to a concrete list and say  
04:55:14 18 these are the things that make me uncomfortable and nothing  
04:55:16 19 else could?

04:55:18 20 **A** No.

04:55:18 21 **Q** Well, why not? Why wouldn't you just say here's my  
04:55:21 22 list and that's all I worry about?

04:55:23 23 **A** There's no concrete list. It would be based on the  
04:55:28 24 prescription in front of me and the patient that's in front  
04:55:31 25 of me and the drug history and the patient information.

**Stossel - Direct/Stoffelmayr**

04:55:36 1 There are so many things that I would take into account.

04:55:41 2 **Q** All right. Let's jump ahead to the 2012 policy.

04:56:18 3 Ms. Stossel, I've given you what's already in  
04:56:22 4 evidence, it's exhibit WAG-MDL-304, a 2012 update to the  
04:56:27 5 Good Faith Dispensing Policy.

04:56:28 6 Do you have that?

04:56:29 7 **A** I do.

04:56:31 8 **Q** And it's considerably longer than that policy we  
04:56:34 9 looked at from 1998, isn't it?

04:56:37 10 **A** Correct.

04:56:41 11 **Q** All right.

04:56:42 12 I'm going to start -- we're not going to go through  
04:56:45 13 this page by page, but I want to just kind of orient you to  
04:56:52 14 the policy.

04:56:52 15 It begins with procedures for good faith dispensing of  
04:56:57 16 controlled substances; correct?

04:56:58 17 **A** Correct.

04:56:59 18 **Q** And the first one is to ask for a patient ID.

04:57:03 19 Do you see that?

04:57:03 20 **A** I do.

04:57:04 21 **Q** So before 2012, if an unfamiliar person came in to  
04:57:09 22 pick up a controlled substances prescription, would you  
04:57:12 23 never check ID?

04:57:14 24 **A** I would ask for the ID if I needed it.

04:57:17 25 **Q** So this was -- was this something brand -- this was

**Stossel - Direct/Stoffelmayr**

04:57:20 1 not something brand new to your practice in 2012, like oh,  
04:57:23 2 we got to start checking IDs now?

04:57:25 3 **A** No. No.

04:57:27 4 **Q** Next one is prescriber. "Confirm the prescriber has  
04:57:31 5 the authority to prescribe controlled substances by  
04:57:33 6 verifying the validity of prescriber information, the DEA  
04:57:37 7 number, and the state license number."

04:57:39 8 Before they gave you a policy that says check to make  
04:57:42 9 sure the prescriber has a valid DEA number, was that  
04:57:46 10 something no one worried about?

04:57:49 11 **A** We always worried about that.

04:57:52 12 **Q** PDMP, you've been checking the PDMP since considerably  
04:57:59 13 before 2012; correct?

04:58:00 14 **A** Correct.

04:58:00 15 **Q** And at this point in time, all your colleagues in Ohio  
04:58:04 16 were checking the PDMP as well; right?

04:58:06 17 **A** Correct.

04:58:07 18 **Q** We'll talk a little later about data review and DUR  
04:58:11 19 review.

04:58:12 20 The next page is -- there's several pages -- include a  
04:58:17 21 much longer list of what you might consider red flags;  
04:58:20 22 correct?

04:58:21 23 **A** Yes.

04:58:22 24 **Q** Here's one we've heard a lot about, unusual geographic  
04:58:27 25 distance. What does that mean to you in your practice?

**Stossel - Direct/Stoffelmayr**

04:58:30 1 **A** So that would mean a distance between the patient and  
04:58:40 2 the prescriber, or a distance between the patient and the  
04:58:45 3 pharmacy that might make me uncomfortable.

04:58:50 4 **Q** In your practice, might make me uncomfortable or  
04:58:53 5 unusual, how many miles is that? Is it 30 miles? Is it  
04:58:56 6 20 miles? Is it 150 miles? What counts?

04:59:00 7 **A** It really depends on the situation. There's no  
04:59:08 8 concrete number that would make me pause or make me  
04:59:12 9 uncomfortable.

04:59:14 10 **Q** All right.

04:59:16 11 We're not going to go through all of these, but let me  
04:59:19 12 ask it this way. Even in the 2012 policy where you've got  
04:59:24 13 this much longer list of, call them red flags, call them  
04:59:28 14 things that might make you uncomfortable, was it telling you  
04:59:31 15 about any factors that you weren't already -- hadn't already  
04:59:35 16 learned about in pharmacy school?

04:59:37 17 **A** No.

04:59:38 18 **Q** Did you treat this much longer list as the complete  
04:59:43 19 list of all the things you had to think about that might  
04:59:48 20 make you uncomfortable?

04:59:49 21 **A** No.

04:59:50 22 **Q** Again, if I said why not, would you say the same thing  
04:59:52 23 you said five minutes ago?

04:59:53 24 **A** Yes.

04:59:56 25 **Q** Okay. I want to focus us on a couple things on this

**Stossel - Direct/Stoffelmayr**

05:00:01 1 page.

05:00:02 2 Section 6 says, document. It is imperative that  
05:00:08 3 pharmacists document all efforts used to validate good faith  
05:00:11 4 dispensing?

05:00:12 5 Has that always been your understanding at Walgreens,  
05:00:15 6 that they wanted you to document the steps you take to --  
05:00:19 7 for lack of a better term -- resolve a red flag? We've  
05:00:22 8 heard people use that term.

05:00:23 9 **A** Yes.

05:00:24 10 **Q** Is that something they told you to do in pharmacy  
05:00:27 11 school?

05:00:29 12 **A** Yes.

05:00:35 13 **Q** Let's go down a bit. Pharmacist's action.

05:00:37 14 Now, do you see it says, "After reviewing the elements  
05:00:40 15 of good faith and following the validation procedures, the  
05:00:43 16 pharmacists must use his or her professional judgment to  
05:00:46 17 determine how to proceed"?

05:00:46 18 Do you see that?

05:00:47 19 **A** I do.

05:00:48 20 **Q** And I want to -- I'll focus, I want to ask you about  
05:00:51 21 the third one, but we'll just go through the first two real  
05:00:54 22 quick.

05:00:54 23 The first one is dispense. If everything checks out,  
05:00:57 24 you're going to dispense the medication; is that right?

05:00:59 25 **A** Correct.



**Stossel - Direct/Stoffelmayr**

05:00:59 1       **Q**       Second one is if the prescriber tells you there's  
05:01:02 2       something wrong with the prescription, what circumstance  
05:01:05 3       could that happen?

05:01:06 4       **A**       So if you would -- if you would have a question about  
05:01:11 5       a prescription, if a red flag was raised and you called the  
05:01:16 6       prescriber to clarify something, and at the end of the  
05:01:21 7       conversation, the prescriber says, "Please do not dispense  
05:01:27 8       this prescription," then that's where this prescription then  
05:01:30 9       becomes not valid to dispense. So the prescriber has  
05:01:34 10      essentially canceled that prescription.

05:01:36 11      **Q**       Would that -- would -- I'm sure there's lots of ways  
05:01:39 12      that could happen.

05:01:41 13             Would a simple version of that be if a prescriber  
05:01:43 14      says, "I've never heard of this person. I didn't write the  
05:01:46 15      prescription"?

05:01:46 16      **A**       Sure, yes.

05:01:47 17      **Q**       And in that case, are you going to dispense, ever?

05:01:50 18      **A**       No, I would not dispense that particular prescription.

05:01:53 19      **Q**       All right. So let's focus on the third one here.  
05:01:57 20      Refusal to dispense.

05:02:01 21             And it begins, "If the prescriber informs the  
05:02:03 22      pharmacist that a prescription for a controlled substance is  
05:02:07 23      valid." So what does -- what does that tell you? What's  
05:02:13 24      this circumstance? If the prescriber says it is valid, what  
05:02:16 25      does that mean?

**Stossel - Direct/Stoffelmayr**

05:02:16 1 **A** So that means if I were to call the prescriber in this  
05:02:20 2 same scenario and the prescriber said to me, "Well, I see  
05:02:26 3 your concern but I still would like you to go ahead and  
05:02:30 4 dispense this prescription."

05:02:31 5 **Q** And in your practice, have there been times like that  
05:02:34 6 when you voiced a concern and a prescriber says, "I want you  
05:02:37 7 to go ahead and fill it anyway"?

05:02:38 8 **A** Yes.

05:02:39 9 **Q** And then what is the rest of this telling you as a  
05:02:43 10 Walgreens pharmacist, the -- what are they telling you? How  
05:02:47 11 do you interpret -- how do you understand this?

05:02:48 12 **A** So it's saying to me that despite this instruction  
05:02:54 13 from the doctor, I still want you to go ahead and dispense  
05:02:57 14 this prescription, that I've determined that based on all of  
05:03:03 15 these elements of good faith dispensing, that I still do not  
05:03:08 16 feel comfortable dispensing this prescription and I am going  
05:03:12 17 to refuse to dispense the prescription.

05:03:15 18 **Q** And in your years at Walgreens, when situations --  
05:03:20 19 well, let me ask you this.

05:03:21 20 Have you had situations like that come up, when a  
05:03:23 21 doctor says, "I want you to fill the prescription," and you  
05:03:25 22 still weren't comfortable?

05:03:26 23 **A** Yes.

05:03:27 24 **Q** And in those circumstances, what have you done if you  
05:03:30 25 still weren't comfortable, despite the doctor saying you

**Stossel - Direct/Stoffelmayer**

05:03:32 1 need to fill this?

05:03:33 2 **A** I've refused to dispense the prescription.

05:03:35 3 **Q** And has Walgreens backed you up when that happened?

05:03:39 4 **A** Yes.

05:03:40 5 **Q** Have you ever received complaints from doctors in  
05:03:44 6 situations like that?

05:03:45 7 **A** Probably.

05:03:47 8 **Q** Have your managers ever received complaints because  
05:03:50 9 Stossel wouldn't fill a prescription that the doctor wanted  
05:03:53 10 filled?

05:03:53 11 **A** Probably.

05:03:54 12 **Q** Have you ever gotten in trouble for that?

05:03:56 13 MR. WEINBERGER: Objection.

05:03:59 14 MR. STOFFELMAYR: What's the objection?

05:03:59 15 THE COURT: Overruled.

05:04:02 16 BY MR. STOFFELMAYR:

05:04:02 17 **Q** Have you ever gotten in trouble for that?

05:04:03 18 **A** No.

05:04:05 19 **Q** Have you ever had your pay docked or your bonus  
05:04:09 20 reduced because a doctor complained that you didn't fill a  
05:04:11 21 prescription?

05:04:12 22 **A** No.

05:04:15 23 MR. STOFFELMAYR: All right, Judge. This  
05:04:16 24 would be a pretty good breaking point if that's all right.

05:04:19 25 THE COURT: All right. Very good.

05:04:20 1 Then ladies and gentlemen, we will break for the  
05:04:24 2 evening.

05:04:25 3 Usual admonitions. Don't read, listen, encounter  
05:04:29 4 anything whatsoever regarding this case or anything close to  
05:04:32 5 it in the media. Do not discuss this case with anyone.

05:04:36 6 And we'll come back tomorrow morning with the balance  
05:04:38 7 of this witness' testimony.

05:04:40 8 Have a good evening.

05:04:41 9 (Jury excused from courtroom at 5:04 p.m.)

05:05:23 10 THE COURT: Okay. Have a good evening, Ms.  
05:05:25 11 Stossel. We'll see you tomorrow morning.

05:05:27 12 THE WITNESS: Okay. Thank you.

05:05:28 13 (Witness excused.)

05:05:28 14 THE COURT: If you'd close the back door,  
05:05:31 15 please, and then I'll take up a few items.

05:05:43 16 All right. So it's my understanding that when we  
05:05:48 17 conclude with Ms. Stossel, the defendants are going to rest;  
05:05:51 18 is that right? We may have another witness.

05:05:54 19 MR. STOFFELMAYR: Nope. That's it. I'm just  
05:05:56 20 looking around to make sure no one's going to veto me, but  
05:05:59 21 yes, that's our plan.

05:06:00 22 THE COURT: Okay. And then -- and then the  
05:06:05 23 plaintiffs are planning to call Mr. Catizone, I think.

05:06:07 24 MR. LANIER: At this point, Your Honor, we'll  
05:06:10 25 caucus afterwards, but my temptation is no.

05:06:13 1 THE COURT: All right. Well, okay. Either  
05:06:19 2 way, we'll wrap up tomorrow morning.

05:06:21 3 Okay. Well, then I want -- overnight, I'd like  
05:06:28 4 counsel to work together on the documents for all the  
05:06:34 5 witnesses we had today, Cook, Militello, and Stossel, the  
05:06:46 6 ones we've done and the ones we have. You'll know which  
05:06:49 7 ones you're using, and then the two depositions, Ashley and  
05:06:52 8 Mack, I don't know if the parties plan to put any in. There  
05:06:55 9 probably won't be many, so we can get those wrapped up  
05:06:58 10 tomorrow.

05:07:00 11 Have you worked out that issue with Mr. Hill's video  
05:07:07 12 clip or you're still working on that?

05:07:09 13 MR. LANIER: We have worked it out,  
05:07:10 14 Your Honor.

05:07:10 15 MR. DELINSKY: Yeah, Your Honor, I can -- do  
05:07:12 16 you want me to -- I think it probably makes sense to read  
05:07:14 17 into the record.

05:07:14 18 THE COURT: Okay.

05:07:15 19 MR. DELINSKY: What we've agreed to just to  
05:07:16 20 make sure there's no confusion.

05:07:17 21 THE COURT: Okay.

05:07:18 22 MR. DELINSKY: There will be no formal  
05:07:19 23 striking of anything that has come in, okay, no instruction  
05:07:24 24 to the jury is -- is number one.

05:07:28 25 Number two, there is an agreement that the use of Mr.

05:07:33 1 Hill's testimony that was provided after the video played,  
05:07:39 2 okay, is appropriate for plaintiffs to use. The video  
05:07:47 3 itself will not be played any further. I think that means  
05:07:50 4 in closing argument.

05:07:51 5 It was only a demonstrative. It's not in evidence  
05:07:55 6 anyways. It will not be played.

05:07:56 7 The content of the video will not be referenced other  
05:08:01 8 than to the extent Mr. Hill, in his testimony afterwards,  
05:08:07 9 you know, he confirmed it.

05:08:10 10 There's a few -- and that's the end of the agreement,  
05:08:12 11 Your Honor. There's two, I think, subtleties. Mr. Lanier  
05:08:17 12 said, and he was fair to say so, he may say, you saw the  
05:08:21 13 video and then Mr. Hill testified. That's fine.

05:08:25 14 On the flip side, there was some prejudicial  
05:08:27 15 references in the video to death, and I think we're in  
05:08:30 16 agreement, that will not be -- that was not the subject of  
05:08:33 17 Mr. Hill's testimony after the video and that will not be  
05:08:36 18 referenced or discussed in closing.

05:08:38 19 THE COURT: Okay.

05:08:39 20 MR. LANIER: I dare say Mr. Delinsky has it  
05:08:42 21 right.

05:08:42 22 THE COURT: Good. Very good.

05:08:46 23 Okay.

05:08:47 24 MR. DELINSKY: And thank you, Your Honor for  
05:08:49 25 giving us the opportunity.

05:08:50 1 THE COURT: Well, I'm glad you worked that  
05:08:51 2 out.

05:08:52 3 MR. DELINSKY: So I think, Your Honor, I don't  
05:08:54 4 know if you want to withdraw the motion or declare it moot  
05:08:57 5 or --

05:08:57 6 THE COURT: Well, I'll just say it's now moot,  
05:09:00 7 based on the discussion we just had.

05:09:02 8 MR. DELINSKY: Okay. Super, Your Honor.

05:09:04 9 THE COURT: That's fine.

05:09:06 10 MR. DELINSKY: Thank you.

05:09:07 11 THE COURT: Okay. All right.

05:09:08 12 So tomorrow we'll wrap up. We'll deal with the  
05:09:12 13 exhibits.

05:09:15 14 I want to -- I'll have to finalize what the time  
05:09:19 15 limits are going to be for closing arguments. We can take  
05:09:24 16 that up tomorrow morning.

05:09:28 17 And then --

05:09:29 18 ^ PLAINTIFF'S COUNSEL: Your Honor, in that  
05:09:29 19 regard. My general view, though, it's very apparent I used  
05:09:34 20 and needed more time than the defense, but my general view  
05:09:38 21 is I've always tried to live by that maximum that I can hold  
05:09:45 22 myself to whatever they need. So my goal would be to -- for  
05:09:49 23 them to figure out what they need, I'll hold myself to that,  
05:09:51 24 and I'll divide it in a way where it covers my rebuttal as  
05:09:56 25 well as my close if that works. So I'll leave it up to

05:10:00 1 them.

05:10:00 2 If they can prepare a suggestion to you, I won't buck  
05:10:03 3 their suggestion.

05:10:10 4 THE COURT: What are the defendants thinking?  
05:10:11 5 Because I think it's important that we get this -- I don't  
05:10:13 6 want to break this up in over 2 days.

05:10:17 7 MR. LANIER: Agreed.

05:10:17 8 THE COURT: So. . .

05:10:19 9 MR. DELINSKY: Your Honor, if we could have  
05:10:20 10 the night to discuss that.

05:10:22 11 THE COURT: That's fine. That's fine.

05:10:23 12 MR. DELINSKY: Internally. I want to look  
05:10:25 13 back as to what the split was in opening and, Your Honor, in  
05:10:30 14 other cases, there have been limits, too, on how much can be  
05:10:34 15 used in rebuttal. I know Mr. Lanier --

05:10:37 16 THE COURT: Look, I -- I'm going to make sure  
05:10:41 17 that substantial percentage of Mr. Lanier's time is on his  
05:10:46 18 opening.

05:10:46 19 MR. DELINSKY: Okay.

05:10:46 20 MR. LANIER: Absolutely. I've got to open  
05:10:49 21 fully. There's no gamesmanship.

05:10:51 22 THE COURT: No, I've been around the block a  
05:10:53 23 few times.

05:10:54 24 MR. LANIER: Yeah.

05:10:54 25 THE COURT: And it's not fair.



05:10:56 1 MR. LANIER: I will not disappoint you,  
05:10:58 2 Your Honor.

05:11:01 3 MR. MAJORAS: And we also want to make sure,  
05:11:02 4 and I guess, with our being able to have rebuttal, we don't  
05:11:06 5 want a repeat of what happened during opening where we got a  
05:11:12 6 certain limitation on opening and then the defense --

05:11:15 7 THE COURT: You can definitely follow these  
05:11:17 8 because the opening was split over two days.

05:11:19 9 MR. WEINBERGER: Right, but the defendants got  
05:11:21 10 about -- my calculation was at least 45 minutes, if not more  
05:11:25 11 than that, over what they had been allotted.

05:11:27 12 THE COURT: Yeah. Well that's why we've got  
05:11:29 13 to be -- this time, I'm going to hold everyone because I do  
05:11:33 14 not want to be going at seven o'clock at night.

05:11:38 15 MR. MAJORAS: We understand, Your Honor.

05:11:39 16 THE COURT: It's not fair to the jury and it's  
05:11:40 17 not fair to whoever's there at 7 o'clock.

05:11:43 18 MR. LANIER: Thank you, Judge.

05:11:43 19 THE COURT: We'll figure out and again,  
05:11:45 20 defendants, again, obviously, there are three parties. A  
05:11:49 21 lot of what you have to say is the same and you only need  
05:11:52 22 one person to say it eloquently, so if you can figure this  
05:11:56 23 out. So we'll set that tomorrow.

05:11:58 24 And then I do want to figure out, you know, are we  
05:12:02 25 going to just proceed, assuming we don't lose anyone between

05:12:07 1 now and next Monday, excuse Juror 13 or if everyone agrees  
05:12:10 2 to keep him, then we --

05:12:12 3 MR. LANIER: As plaintiffs, we would ask to  
05:12:14 4 excuse him, excuse Juror No. 13.

05:12:16 5 THE COURT: All right.

05:12:16 6 MR. LANIER: I know it's a tough thing to do,  
05:12:18 7 but we've got to get a unanimous verdict, and it's hard  
05:12:22 8 enough with 12; 13 is -- percent harder.

05:12:28 9 THE COURT: No. That's -- we'll proceed as we  
05:12:33 10 had planned from the beginning. That's fine.

05:12:35 11 MR. DELINSKY: Your Honor --

05:12:36 12 MR. LANIER: Your Honor, if I could ask one  
05:12:38 13 more question with regards to this.

05:12:39 14 Is the Court okay if we set up that small screen right  
05:12:44 15 here (indicating) like we did for opening and do the same  
05:12:46 16 thing, or is that -- is that an anathema?

05:12:51 17 MR. MAJORAS: Did we conclude that didn't  
05:12:53 18 interfere with -- we had a problem with the audio and I  
05:12:55 19 don't know whether that was an issue or not.

05:12:58 20 MR. LANIER: Yeah, I think it worked fine for  
05:12:59 21 everybody. I think everybody used it.

05:13:01 22 THE COURT: I think it worked.

05:13:04 23 MR. MAJORAS: The court reporter had issues on  
05:13:06 24 the headphones. That's what I'm remembering.

05:13:08 25 THE COURT: Yeah. We've got to -- why don't

05:13:11 1 we --

05:13:12 2 MR. LANIER: My only concern, Your Honor, is  
05:13:14 3 it's helpful for the jury.

05:13:15 4 THE COURT: Okay. It's okay. Maybe someone  
05:13:20 5 might bring it in Wednesday and test it out --

05:13:23 6 MR. LANIER: Perfect.

05:13:23 7 THE COURT: -- with the court reporter and  
05:13:24 8 make sure we don't have any interference because I don't  
05:13:30 9 want to have, you know, a delay Monday with that, so we'll  
05:13:33 10 do a test.

05:13:34 11 MR. MAJORAS: We can do that, Your Honor.

05:13:35 12 THE COURT: We'll do a test Wednesday. That's  
05:13:36 13 fine.

05:13:38 14 MR. LANIER: We'll do that, Your Honor.

05:13:39 15 MR. DELINSKY: Your Honor, may I just be heard  
05:13:40 16 on two quick items. With regard to the alternate juror --

05:13:47 17 THE COURT: Right.

05:13:48 18 MR. DELINSKY: -- Juror No. 14. . .

05:13:50 19 MR. LANIER: 13.

05:13:52 20 MR. DELINSKY: 13?

05:13:53 21 THE COURT: I think it's actually 14.

05:13:55 22 MR. DELINSKY: My request would be that we  
05:13:59 23 hold off on dismissing that --

05:14:02 24 THE COURT: Well, Mr. Delinsky, I'm going to  
05:14:03 25 wait until --

05:14:04 1 MR. DELINSKY: Yeah. Correct.

05:14:05 2 THE COURT: -- until the end of the day

05:14:07 3 Monday.

05:14:08 4 MR. DELINSKY: Yes. We're on the same page.

05:14:09 5 THE COURT: It's after closing arguments and  
05:14:11 6 after my instructions. Literally it's the moment before the  
05:14:15 7 jury goes out to deliberate.

05:14:16 8 MR. DELINSKY: Yes.

05:14:17 9 THE COURT: Because, you know, someone could  
05:14:18 10 get sick.

05:14:19 11 MR. DELINSKY: Yes. Exactly. Same. Thank  
05:14:22 12 you, Your Honor.

05:14:22 13 THE COURT: It's not likely, but, so I wait  
05:14:24 14 till the very end.

05:14:27 15 MR. DELINSKY: Yeah.

05:14:27 16 THE COURT: And then I will instruct him  
05:14:31 17 essentially to continue following the rules and not to talk  
05:14:34 18 to anyone until he knows there's a verdict and we'll tell  
05:14:38 19 him.

05:14:38 20 MR. DELINSKY: All right.

05:14:38 21 THE COURT: I think that's a good idea.

05:14:40 22 MR. DELINSKY: Thank you, Your Honor.

05:14:40 23 THE COURT: That's what I generally do.

05:14:41 24 MR. DELINSKY: Okay.

05:14:43 25 Your Honor, the second issue, and I raise this with

05:14:47 1 great timidity, okay. We talked this morning about one of  
05:14:54 2 the plaintiffs exhibits that Your Honor admitted through Mr.  
05:14:57 3 Hill. It was P1253, that was the *East Main* case.

05:15:02 4 THE COURT: Right.

05:15:02 5 MR. DELINSKY: And I think Mr. Lanier's use of  
05:15:04 6 it was fair in that he was impeaching part of Mr. Hill's  
05:15:08 7 testimony.

05:15:08 8 Mr. Hill was saying DEA systemically began educating  
05:15:12 9 people on red flags one year, this is two years earlier. It  
05:15:15 10 contains the word red flags.

05:15:16 11 I think that's fair. But throughout the day,  
05:15:18 12 Your Honor, I've read the opinion and the complexity that I  
05:15:21 13 see is that these opinions lay out in great detail the  
05:15:26 14 complete record in the underlying cases. And a lot of  
05:15:29 15 collateral issues come in. And to give Your Honor an  
05:15:31 16 example, there's a reference in this opinion to what I think  
05:15:36 17 plaintiffs have -- and other people refer to as the "blue  
05:15:39 18 highway." There's -- there's a discussion of pills coming  
05:15:43 19 from Florida or doctors --

05:15:45 20 THE COURT: Let me see the opinion. Maybe --

05:15:47 21 MR. DELINSKY: Sure, Your Honor. It has some  
05:15:48 22 of my highlights, but I don't think that matters.

05:15:51 23 MR. LANIER: And I'll be glad to go over that  
05:15:53 24 with Mr. Delinsky. I don't want anything in there that  
05:15:56 25 doesn't belong in there.

05:15:56 1 THE COURT: All right. Well, maybe we can  
05:15:58 2 edit it.

05:15:58 3 MR. LANIER: Yeah.

05:15:59 4 MR. DELINSKY: I think that's fine,  
05:16:01 5 Your Honor.

05:16:01 6 THE COURT: It was in for the reason  
05:16:03 7 Mr. Lanier used it, not -- not to put in all the details and  
05:16:09 8 contents of the case because the witness doesn't even know  
05:16:12 9 that.

05:16:12 10 MR. LANIER: Correct.

05:16:12 11 THE COURT: So let's edit.

05:16:14 12 MR. LANIER: Yeah. We don't need to waste  
05:16:16 13 your time with that right now, Your Honor, until we have a  
05:16:18 14 chance to work at it together.

05:16:19 15 THE COURT: All right.

05:16:20 16 MR. WEINBERGER: And we still have to work on  
05:16:22 17 the CVS *Holiday* case.

05:16:23 18 MR. LANIER: Yeah.

05:16:24 19 MR. WEINBERGER: And what we're going to do  
05:16:25 20 with that.

05:16:26 21 THE COURT: We're running out of time.

05:16:27 22 MR. WEINBERGER: Oh, I understand that,  
05:16:29 23 Your Honor, and frankly the more -- the longer the trial  
05:16:33 24 goes, the more of the CVS *Holiday* case gets, you know, read  
05:16:36 25 into the record through witnesses. So --

05:16:42 1 MR. DELINSKY: We'll work on those,  
05:16:43 2 Your Honor.

05:16:44 3 MR. WEINBERGER: All right. We'll work on it.

05:16:45 4 MR. DELINSKY: Thank you both.

05:16:46 5 MR. MAJORAS: Your Honor, John Majoras. One  
05:16:48 6 minor issue.

05:16:48 7 I have -- if I may approach in just a moment. I have  
05:16:52 8 put together, this would still be over our objection, but  
05:16:55 9 some slight revisions to the language you had proposed on  
05:16:58 10 the limiting instruction about the Boards of Pharmacy. I'll  
05:17:01 11 pass that to plaintiffs at the same time. I'm not asking  
05:17:03 12 for a decision on it right now, but something to consider.

05:17:05 13 THE COURT: Well, I'll certainly look. Let me  
05:17:08 14 see it.

05:17:09 15 MR. MAJORAS: You'll have -- the top paragraph  
05:17:10 16 will be the one we're proposing with the ability to see how  
05:17:13 17 it's changed in the lower paragraph.

05:17:14 18 THE COURT: All right. Well, let's. . .

05:17:22 19 MR. WEINBERGER: While he's bringing that up,  
05:17:24 20 Your Honor, are you -- in terms of finalizing exhibits, you  
05:17:31 21 talked earlier about us having to get together and making  
05:17:35 22 sure that --

05:17:36 23 THE COURT: Right. Right.

05:17:39 24 MR. WEINBERGER: I think that if we could use  
05:17:43 25 tomorrow afternoon to do that.

05:17:44 1 THE COURT: Use tomorrow afternoon. We should  
05:17:46 2 wrap up tomorrow morning. Tomorrow afternoon, people should  
05:17:49 3 stay and go -- work with Mr. Pitts and Julian to go through  
05:17:54 4 and make sure everything is the way it should be. And I'm  
05:18:00 5 particularly careful.

05:18:01 6 I had a criminal case where everyone assured me that  
05:18:03 7 that had happened and something got in that shouldn't, and  
05:18:08 8 we had a mistrial. Now, it's not likely that will happen  
05:18:13 9 here because that will happen to be the defendants' prior  
05:18:15 10 record, which it was -- in a jury -- you're as old as I am.  
05:18:22 11 A lot of things can happen and the jury came back and said,  
05:18:26 12 the question was, "We don't recall seeing this exhibit in  
05:18:29 13 the trial. What is it?"

05:18:31 14 And the reason they didn't see it is it had no  
05:18:34 15 business being there and so ended that trial. So. . .

05:18:43 16 MR. HYNES: Your Honor. . .

05:19:06 17 THE COURT: Mr. Majoras, is there a reason  
05:19:08 18 you're crossing out the descriptor that the testimony is  
05:19:16 19 from one or more of the defendants' employees? I mean,  
05:19:20 20 that's -- that's the whole point.

05:19:23 21 MR. MAJORAS: Well, Your Honor, the -- I think  
05:19:25 22 the whole point is that there was testimony related to the  
05:19:28 23 Board of Pharmacy. My concern and our objection still  
05:19:30 24 remains is that it prejudicially pinpoints particular  
05:19:35 25 witnesses and calls into question those witnesses, but I



05:19:38 1 thought that was one way to address it.

05:19:43 2 MR. WEINBERGER: Well, there certainly weren't  
05:19:45 3 any conversations with --

05:19:46 4 THE COURT: Well, you say you may consider  
05:19:48 5 their recollections, but there's no -- it doesn't tie into  
05:19:51 6 anyone.

05:19:53 7 MR. MAJORAS: The witness's recommendation if  
05:19:55 8 that helps, or, I'm sorry, recollection. I gave away all my  
05:19:58 9 copies, Your Honor.

05:19:58 10 THE COURT: All right. Well. . .

05:20:09 11 MR. WEINBERGER: You know, particularly -- I  
05:20:10 12 hate to beat a dead horse here, but particularly with the  
05:20:14 13 confusion that was created by the introduction of this  
05:20:20 14 testimony by Ms. Fumerton as if, you know, we were  
05:20:27 15 endorsing --

05:20:27 16 THE COURT: Well, I'm not -- I've seen this.

05:20:30 17 I'm inclined to stick with my language. I think I  
05:20:34 18 spent a lot of time on it. I think it's important to -- so  
05:20:42 19 the jury knows what I'm talking about, it's conversations  
05:20:45 20 that certain defendants employees said they had with members  
05:20:52 21 of Boards of Pharmacy. And I do want to reference that  
05:20:57 22 it's -- it's admissible as evidence of defendants.

05:21:06 23 MR. MAJORAS: Your Honor, I think in  
05:21:07 24 particular, the language they claimed they had certainly  
05:21:12 25 raises suspicion or the way it's phrased as to whether or

05:21:17 1 not they even had the conversation.

05:21:19 2 Your Honor, as I said, we raised our objection. I  
05:21:21 3 understand the ruling. These were my proposals.

05:21:34 4 THE COURT: All right. I agree.

05:21:36 5 I think I'm going to change claim to testify. They  
05:21:38 6 testified they had. That's a more neutral statement. I  
05:21:41 7 agree.

05:21:41 8 MR. WEINBERGER: We agree with that.

05:21:42 9 MR. MAJORAS: Thank you, Your Honor.

05:21:44 10 THE COURT: It wasn't my intent to cast  
05:21:46 11 aspersions on it.

05:21:47 12 So we'll change -- that's a good suggestion. We'll  
05:21:50 13 change that.

05:22:01 14 Oh, are we likely to have, this last day, any  
05:22:09 15 stipulations or admissions or answers to interrogatories?  
05:22:14 16 We haven't had any. If not, we can delete Pages 14 and 15.

05:22:20 17 MR. WEINBERGER: I don't -- I don't  
05:22:21 18 anticipate.

05:22:23 19 MR. LANIER: We do not anticipate anything  
05:22:24 20 from the plaintiffs' side.

05:22:25 21 THE COURT: All right.

05:22:27 22 MR. STOFFELMAYR: We had discussed potentially  
05:22:29 23 reading one interrogatory.

05:22:30 24 THE COURT: Well. . .

05:22:31 25 MR. STOFFELMAYR: I think we're leaning

05:22:33 1 against it, but we should circle and make sure.

05:22:35 2 THE COURT: Well, if there is one, that stays  
05:22:37 3 in.

05:22:37 4 MR. STOFFELMAYR: I think there will not be.

05:22:39 5 THE COURT: Stipulations are out. If it's  
05:22:40 6 not, it's out. We'll cover it tomorrow.

05:22:51 7 Okay. And I circulated the -- I read carefully the  
05:22:57 8 defendants' submissions, which came in Friday on the jury  
05:22:59 9 instructions and the plaintiffs', which came in today. I  
05:23:02 10 took some things from both.

05:23:06 11 We did a lot of work on it. I'm comfortable with the  
05:23:09 12 way it is. Probably no one's completely happy, but I think  
05:23:12 13 it's as accurate and as clear as I can make it. But if  
05:23:19 14 someone sees something they still think is really wrong,  
05:23:23 15 we'll discuss it tomorrow. Okay.

05:23:28 16 Anything else anyone needs to bring up or wants to  
05:23:31 17 bring up?

05:23:32 18 Okay. Have a good evening. We'll see you tomorrow.

19 COUNSEL EN MASSE: Thank you, Your Honor.

20 (Proceedings adjourned at 5:23 p.m.)

21

22

23

24

25

1		
2		
3		
4		
5	DIRECT EXAMINATION OF KENNETH COOK	6514
6	CROSS-EXAMINATION OF KENNETH COOK	6556
7	REDIRECT EXAMINATION OF KENNETH COOK	6582
8	RECROSS-EXAMINATION OF KENNETH COOK	6591
9	DEPOSITION TESTIMONY OF DEMETRA ASHLEY	6593
10	CROSS-EXAMINATION OF DEMETRA ASHLEY	6621
11	REDIRECT EXAMINATION OF DEMETRA ASHLEY	6633
12	RECROSS-EXAMINATION OF DEMETRA ASHLEY	6641
13	REDIRECT EXAMINATION OF DEMETRA ASHLEY	6642
14	DIRECT EXAMINATION OF LORI MILITELLO	6645
15	CROSS-EXAMINATION OF LORI MILITELLO	6702
16	REDIRECT EXAMINATION OF LORI MILITELLO	6729
17	RECROSS-EXAMINATION OF LORI MILITELLO	6742
18	DEPOSITION TESTIMONY OF DEBORAH MACK	6748
19		
20	DIRECT EXAMINATION OF AMY STOSSEL	6763
21		

#### **C E R T I F I C A T E**

I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter prepared from my stenotype notes.

/s/ Heather K. Newman

HEATHER K. NEWMAN, RMR, CRR

11-8-2021

DATE